SOUTHERN METHODIST UNIVERSITY
DEDMAN SCHOOL OF LAW

MEMORANDUM

TO: All First Year Legal Writing Students

FROM: Ruth A. Cross, Clinical Professor and Director of Legal Writing, Writing, and Advocacy

DATE: Summer 2018

RE: Legal Writing Classes and Diagnostic Writing Assignment and Grammar Test

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Welcome to the SMU Dedman School of Law. You are about to begin what will be a very exciting but demanding period in your education. During the next few years, you will learn not only new ways to analyze and think about the law, but also new ways to write and communicate about the law. One of the goals of the legal writing course is to teach you writing skills specifically relating to the law. To that end, please complete the following two assignments and bring them with you to the August 16 Orientation session that your legal writing professor will lead.

1) As detailed on the attached assignment, please complete a short writing exercise. It will serve as a diagnostic tool to allow your professor to identify those students who might benefit from additional help with their writing and introduce you to the SMU Dedman School of Law Code of Professional Responsibility. **Do not do any additional research and do not be concerned with the proper way to cite the sources.** The readings accompanying this assignment are for background information. Read them and decide whether and how to use them in your report.

   Your report should not be longer than four double-spaced pages. The positions you take are not important to the evaluation of the report; it is the quality of the writing that is important. Therefore, it should reflect what you have learned from the two books we asked you to read this summer. As you write, be sure you consider the needs of your audience (in this case the Committee on Professional Responsibility). In addition, review and revise so that the report is well organized, each paragraph is cohesive and begins with a topic sentence, you have included transitions where appropriate, your sentences are clear, and you have chosen the words that most accurately reflect the ideas you wish to convey.

2) Complete two CALI Grammar lessons and pass the grammar test for each lesson (requires a score of 85% or higher). Login instructions and other details are on the attached sheet.

DIAGNOSTIC WRITING EXERCISE

Instead of enrolling in Southern Methodist University Dedman School of Law, you unwisely decided to attend another elite private institution, the Western College of Law. WCL has a Code of Professional Responsibility identical to that of SMU. After an outstanding first-year performance, you became a research assistant to Professor Miranda Garcia. Professor Garcia chairs the school's Committee on Professional Responsibility.

Unfortunately, the Committee is having a busy year. Three cases are now pending.

The first case involves Ben Reilly O'Shea, who was a treasurer of a student organization. O'Shea took $2500 from organization funds and spent it on a trip to Cancun with some friends.

In the second case, Peter Parker Jones submitted a paper in a constitutional law seminar that contained plagiarized material. The paper contained several passages that were exact quotations from a 2010 law journal article on the same subject. Moreover, the organization and ideas of Jones's paper were the same as that of the author of the article. Additionally, Jones had utilized many sentences from the article while changing only a few words. While Jones had used quotation marks to indicate the exact quotes, he had not properly attributed any of the other matters. The professor recognized the similarities and confirmed her suspicions through a plagiarism detection service.

In the third case, Carlie Cooper Smith and Vin Gonzales Esteban had violated course rules in connection with a paper each submitted in their Legal Research and Writing course. The professor discovered that the students had worked together to complete the assignment, despite course rules requiring each student to do their own work without any help from others. In addition, the professor discovered that Ms. Smith had sent the paper to her father to edit, again in violation of course rules prohibiting students from receiving any outside help.

The Committee on Professional Responsibility conducted separate hearings and found each student guilty of the charged offenses. It is now contemplating appropriate sanctions. While the Committee members are not certain whether they will impose identical sanctions, they want the sanctions in all the cases to be consistent. Professor Garcia has asked you to write a report to the Committee recommending the sanction to be imposed in each case. Whether you recommend the same or different sanctions, please fully explain your reasons.

BACKGROUND MATERIALS:

1. In re Lamberis, 93 Ill. 2d 222, 443 N.E.2d 549 (1982) (enclosed)
2. Application of Taylor, 293 Ore. 285, 647 P.2d 462 (1982) (enclosed)
3. SMU Dedman Law School Code of Professional Responsibility (found in the Law School Catalog - available on the law school website)

Original Image of 443 N.E.2d 549 (PDF)

93 Ill.2d 222
Supreme Court of Illinois.

In re Anthony Byron LAMBERIS,
Attorney, Respondent.

No. 56121.
|
Dec. 17, 1982.

Synopsis
In disciplinary proceeding, the Supreme Court, Simon, J., held that knowingly plagiarizing two published works in thesis submitted in satisfaction of requirement for masters degree in law warrants censure.

Ordered accordingly.

West Headnotes (1)

[1] **Attorney and Client**
Misconduct in Other Than Professional Capacity

Attorney and Client
Public Reprimand;Public Censure; Public Admonition

Although no violation of law or fraud of court is alleged, and although academic forum may appear to be fairly distant from practice of law, knowingly plagiarizing two published works in thesis submitted in satisfaction of requirement for master's degree in law warrants censure.

17 Cases that cite this headnote

Attorneys and Law Firms

***224** **550** ***624** James J. Grogan, Attorney Registration and Disciplinary Com'n, Chicago, for administrator.

William J. Harte, Ltd., Chicago, for respondent; William J. Harte, Chicago, of counsel.

Opinion

SIMON, Justice:

In writing a thesis which he submitted to Northwestern University in satisfaction of a requirement for a masters degree in law, the respondent, Anthony Byron Lamberis, plagiarized two published works. In an attorney disciplinary proceeding based on this conduct the Hearing Board found that the respondent had "knowingly plagiarized" the two published works and that this plagiarism constituted "conduct involving dishonesty, fraud, deceit, or misrepresentation" violating the Illinois Code of Professional Responsibility DR 1-102(A)(4) (Illinois State Bar Association 1977). The Hearing Board recommended that the respondent be censured. The Review Board adopted the Hearing Board's findings of fact, but recommended in a closely divided vote that the respondent receive a suspension of six months.

The principal facts in this case are essentially undisputed. The respondent was admitted to practice law in Illinois on November 16, 1970, after receiving his law degree earlier in that year. In September 1970 he enrolled in an LL.M. degree program at the Northwestern University School of Law. In addition to course work the Northwestern degree program required that the candidate submit a thesis, although there was no time limit on when the candidate had to complete it. After successfully ***225** completing the required course work during the 1970-71 academic year, the respondent briefly served as an assistant Attorney General of Illinois and then entered private practice in Palatine.

While practicing law the respondent continued to work on his thesis. In 1977 he submitted a thesis that was rejected by the faculty as unsatisfactory. In June 1978, the respondent submitted a new thesis which he titled, "The Law of Privacy and its Effects on Law Enforcement: Title III Problems." In preparing pages 13 through 59 of his 93-page thesis the respondent incorporated, substantially verbatim and without crediting the source, excerpts from two published works: J. Carr, The Law of Electronic Surveillance (1977) and M. Paulsen, The Problems of

Electronic Eavesdropping (1977). Thus, a substantial portion of his thesis, which the respondent misrepresented as his own work, was the work of other authors.

In June 1979, Northwestern notified the respondent that there were possible honor code violations concerning the thesis. The respondent attempted to resign from the degree program, but the university refused to accept this resignation. Instead, the law school initiated student disciplinary proceedings, and on January 22, 1980, the faculty of the Northwestern University School of Law voted to expel him for plagiarism. Thereafter, the law school complained to the Attorney Registration and Disciplinary Commission, a complaint which caused the Administrator to initiate this disciplinary proceeding.

The only factual finding that the respondent disputes is the Hearing Board's conclusion that he "knowingly plagiarized" the two published works. In reaching this finding the Board regarded as unworthy of belief respondent's explanation that his plagiarism was the result of academic laziness and did not reflect an intentional effort to deceive his thesis examiners. The Hearing Board ***226** found:

> ****551** *****625** "Respondent engaged in conduct which clearly constituted plagiarism. Objectively considered, the facts demonstrate nothing else. Subjectively, it is inconceivable to us that a person who has completed undergraduate school and law school would not know that representing extensively copied material as one's own work constitutes plagiarism. Respondent's deception is compounded by his lack of candor in claiming that his efforts were not an intentional effort to deceive. We cannot accept an assertion that would require that we find such a naivete or a lack of intelligence on his part."

We agree with the Board's conclusions; given respondent's extensive academic background and the extent of the verbatim copying, any other finding would be untenable.

Respondent also argues that this court should not impose discipline on an attorney for plagiarism that occurred in an academic forum which is removed from the practice of law. The Administrator has not cited and we have not found any case in which an attorney was professionally disciplined for such conduct. Respondent argues that there is no modern authority in this State which would support this court in disciplining attorneys for conduct arising outside the practice of law when that conduct is considered deceitful and immoral but not criminal.

This court has often disciplined attorneys for conduct arising outside the practice of law. Most of these cases, however, have involved illegal conduct, fraud on the court, or situations closely analogous to those which an attorney confronts in the practice of law. See, *e.g.*, *In re Gold* (1979), 77 Ill.2d 224, 32 Ill.Dec. 912, 396 N.E.2d 25 (failure to file Federal tax returns); *In re Mitan* (1979), 75 Ill.2d 118, 25 Ill.Dec. 622, 387 N.E.2d 278 (nondisclosure of information on bar application), *cert. denied* (1979), 444 U.S. 916, 100 S.Ct. 231, 62 L.Ed.2d 171; *In re Cook* (1977), 67 Ill.2d 26, 7 Ill.Dec. 99, 364 N.E.2d 86 (false testimony before grand jury and United States Senate subcommittee); *In re Melin* (1951), 410 Ill. 332, 102 N.E.2d 119 (commingling of funds by executor of estate).

Although no violation of law or fraud on the court is alleged ***227** here, and although the academic forum may appear to be fairly distant from the practice of law, we believe that the respondent's conduct warrants discipline. In imposing discipline in this case we do not intend to imply that attorneys must conform to conventional notions of morality in all questions of conscience and personal life. "We are charged with the responsibility of supervising the professional conduct of attorneys practicing in this State, and we are interested in their private conduct only in so far as such relates to their professional competence or affects the dignity of the legal profession." *In re Serritella* (1955), 5 Ill.2d 392, 398, 125 N.E.2d 531.

In cases of this type, fairness and justice require that discipline be imposed only "to protect members of the public, to maintain the integrity of the legal profession and to safeguard the administration of justice from reproach." (*In re Nowak* (1976), 62 Ill.2d 279, 283, 342 N.E.2d 25.) In this case, sanctions are appropriate and

required because both the extent of the appropriated material and the purpose for which it was used evidence the respondent's complete disregard for values that are most fundamental in the legal profession.

The extent of the respondent's plagiarism displays an extreme cynicism towards the property rights of others. He incorporated verbatim the work of other authors as a substantial portion of his thesis and obtained no permission for this use. Moreover, this conduct amounted to at least a technical infringement of the publishers' federally protected copyrights. This fraudulent conversion of other people's property is similar to conduct that Illinois and other States have held warrants discipline. *E.g., In re Abbamonto* (1960), 19 Ill.2d 93, 97, 166 N.E.2d 62 (wrongful conversion of down payment on real estate); *Stratmore v. State Bar* (1975), 14 Cal.3d 887, 538 P.2d 229, 123 Cal.Rptr. 101 (filing of false expense claims with law firm recruiters); *In* ****552** *****626** *re Gunderson* (1980), 75 A.D.2d 706, 427 N.Y.S.2d 307 (attempted theft of a museum piece).

***228** The purpose for which respondent used the appropriated material also displays a lack of honesty which cannot go undisciplined, especially because honesty is so fundamental to the functioning of the legal profession. (*In re March* (1978), 71 Ill.2d 382, 391, 17 Ill.Dec. 214, 376 N.E.2d 213 (attorney disciplined for fraud in sale of stock); *In re Lavery* (1978), 90 Wash.2d 463, 587 P.2d 157 (attorney disciplined for falsifying law school transcripts and letters of recommendation).) "The public as well as * * * the courts have an interest in [an attorney's] integrity and are entitled to require that he shun even the appearance of any fraudulent design or purpose." *In re Abbamonto* (1960), 19 Ill.2d 93, 98, 166 N.E.2d 62.

At the time of respondent's conduct, this court considered the Illinois Code of Professional Responsibility adopted by the Illinois State Bar Association in 1977 as a safe guide for attorneys in their professional conduct. (*Cf. In re Krasner* [1965], 32 Ill.2d 121, 129, 204 N.E.2d 10.) DR 1-102(A)(4) of the ISBA code reflects the commitment to honesty that each lawyer must make when it states that "[a] lawyer shall not * * * engage in conduct involving dishonesty, fraud, deceit, or misrepresentation" (Illinois State Bar Association 1977). This provision is identical to the comparable provision in the Code of Professional Responsibility subsequently adopted by this court (79 Ill.2d R. 1-102(a)(4)). The respondent violated this provision when he plagiarized the two sources. The essence of plagiarism is deceit. In this case, the deceit is aggravated by the level on which it occurred. Academic forums have a long and well-known tradition of evaluating each individual on his own performance. The respondent attempted to exploit this tradition to his own benefit; the purpose of his deceitful conduct was to obtain a valuable consideration, an advanced law degree, that would have undoubtedly improved his prospects for employment, reputation and advancement in the legal profession.

Having decided that the respondent's conduct warrants ***229** some discipline, we must decide whether to impose disbarment, suspension or censure. The Hearing Board recommended censure; the Review Board recommended suspension for six months; and the Administrator argues here for disbarment. In support of his position, the Administrator cites many cases for the proposition that intentional fraud warrants disbarment. We do not find these cases conclusive in the novel context of this case. "While uniformity in attorney discipline is desirable, every case must be considered on its own merits." *In re Driscoll* (1981), 85 Ill.2d 312, 317, 53 Ill.Dec. 204, 423 N.E.2d 873.

The respondent's law partner, Steve Delanty, testified that the respondent has an impeccable reputation in the community and has had a good record in a private practice which, according to Mr. Delanty, has represented "thousands of clients." Moreover, in the 10 years since he entered private practice, no client has ever complained about his conduct, professional or otherwise.

Although the respondent's plagiarism displayed a defect in character, it did not directly cause harm to any person. The respondent's fraudulent appropriation of the two works did not diminish the value of the works to the authors, nor did it expose the authors to any risk of loss. Moreover, in appropriating their property, the respondent did not violate any trust which the authors had reposed in him.

All honest scholars are the real victims in this case. The respondent's plagiarism showed disrespect for their legitimate pursuits. Moreover, the respondent's conduct

undermined the honor system that is maintained in all institutions of learning. These harms, however, are rather diffuse, and in any event, Northwestern University has already rectified them by expelling the respondent, an act which will also undoubtedly ensure that the respondent will be hereafter excluded from the academic world.

**553 ***627 In view of the respondent's apparently unblemished record in the practice of law and the disciplinary sanctions *230 which have already been imposed by Northwestern University, we choose censure as the most appropriate discipline for the respondent.

Respondent censured.

UNDERWOOD, Justice, dissenting:
Although I agree with the majority's conclusion that respondent's conduct warrants discipline, the censure imposed seems to me an inadequate response to the deliberate and deceitful nature of respondent's conduct.

While no two disciplinary cases are completely alike, "predictability and fairness require a degree of consistency in the selection of sanctions for similar types of misconduct." (*In re Saladino* (1978), 71 Ill.2d 263, 275, 16 Ill.Dec. 471, 375 N.E.2d 102. See *In re Feldman* (1982), 89 Ill.2d 7, 59 Ill.Dec. 103, 431 N.E.2d 388.) Respondent's action constituted a purposeful violation of the bar's fundamental obligation of honesty, and cannot, in my judgment, be equated with the negligent commingling and conversion for which we censured the respondent in *In re McLennon* (1982), 93 Ill.2d 215, 66 Ill.Dec. 627, 443 N.E.2d 553. Rather, the character of respondent's misconduct more closely resembles a fraudulent misrepresentation which has customarily received a more severe sanction. See *In re Nowak* (1976), 62 Ill.2d 279, 342 N.E.2d 25; *In re March* (1978), 71 Ill.2d 382, 17 Ill.Dec. 214, 376 N.E.2d 213; *In re Sherre* (1977), 68 Ill.2d 56, 11 Ill.Dec. 304, 368 N.E.2d 912.

As noted by the majority, the reasons for which we impose discipline are "to maintain the integrity of the legal profession, to protect the administration of justice from reproach, and to safeguard the public." (*In re LaPinska* (1978), 72 Ill.2d 461, 473, 21 Ill.Dec. 373, 381 N.E.2d 700.) I think it clear that respondent's intentional deceitfulness tends to bring the legal profession into disrepute and, although not perpetrated in the context of an attorney-client relationship, indirectly threatens the administration of justice by undermining public confidence in the integrity of officers of the court. *In re March* (1978), 71 Ill.2d 382, 391, 17 Ill.Dec. 214, 376 N.E.2d 213; *In re Abbamonto* (1960), 19 Ill.2d 93, 98, 166 N.E.2d 62.

Because of the calculated nature of respondent's misconduct *231 some suspension seems to me necessary. Since the length of a suspension should bear a close relationship to the harm or risk of harm caused (*In re Saladino* (1978), 71 Ill.2d 263, 276, 16 Ill.Dec. 471, 375 N.E.2d 102), and since respondent's misconduct did not directly affect any other person, I would think a three-month suspension appropriate.

THOMAS J. MORAN, J., joins in this dissent.

All Citations

93 Ill.2d 222, 443 N.E.2d 549, 66 Ill.Dec. 623

Original Image of 647 P.2d 462 (PDF)

293 Or. 285
Supreme Court of Oregon, En Banc.

In the Matter of the Application of
Ronald Curtis TAYLOR, For Admission
to Practice Law in the State of Oregon.

OSB 89-AD; SC 27292.
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Argued and Submitted Feb. 9, 1982.
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Decided June 29, 1982.

Synopsis
Applicant to State Bar requested review of recommendation that he be denied admission. The Supreme Court held that facts establishing theft and perjury, even without conviction, and discharge of student loans in bankruptcy, when there is no extraordinary hardship, demonstrate want of requisite good moral character which, in absence of reformation, warrants denial of admission to bar.

Application denied.

West Headnotes (3)

[1] Attorney and Client
Capacity and Qualifications

Arrest or charge ending in dismissal does not establish that accused committed prohibited act; on other hand, dismissal does not preclude inquiry to ascertain whether offense was committed.

2 Cases that cite this headnote

[2] Attorney and Client
Capacity and Qualifications

Facts establishing theft and perjury, even without conviction, and discharge of student loans in bankruptcy, when there is no extraordinary hardship, demonstrate want of requisite good moral character which, in absence of reformation, warrants denial of admission to bar. ORS 9.220, 162.065, 164.045.

13 Cases that cite this headnote

[3] Bankruptcy
Protection Against Discrimination or Collection Efforts in General;"Fresh Start."

Statutes do not prohibit examination of circumstances surrounding bankruptcy, as these circumstances illustrate judgment of applicant for admission to bar in handling serious financial obligations.

8 Cases that cite this headnote

Attorneys and Law Firms

***285** ****462** William B. Wyllie, Salem, filed a brief for applicant.

Gary E. Rhoades, Portland, argued the cause for the Oregon State Bar. With him on the brief was Albert A. Menashe, Portland.

Opinion

***287** PER CURIAM.

Applicant requests admission to the Oregon State Bar. He passed the Bar examination in the summer of 1980, but was not recommended for admission by the Board of Bar Examiners. On his petition for review, a hearing was held before a trial board pursuant to the Rules for Admission of Attorneys. The trial board recommended that applicant be denied admission to the Bar and, with one modification, this recommendation was adopted by the Disciplinary Review Board. Applicant then requested review by this court. ORS 9.535.

This case comes under ORS 9.220, which, at the time these proceedings began, [1] required:

"An applicant for admission as attorney must apply to the Supreme Court and show that he or she:

"* * *

"(2) Is a person of good moral character, which may be proved by any evidence satisfactory to the court."

****463** The objections to applicant's admission are in the form of allegations of specific acts by applicant which purportedly demonstrate a lack of good moral character. Though the statute places on the applicant the burden of proving his good moral character, the Oregon State Bar went forward and proved the various facts on which it relies. Cf. In re Easton, 289 Or. 99, 101, 610 P.2d 270 (1980), cert. denied 449 U.S. 862, 101 S.Ct. 166, 66 L.Ed.2d 79 (1980).

***288** We cannot overstate the necessity that one who seeks admission to the Bar be of good moral character. An applicant must possess this character in addition to intellectual abilities, and intellect alone cannot make up for deficiency of moral character.[2] In our opinions in cases of this kind, we have sought to stress this aspect of joining the profession, but the unfortunate fact is that these opinions are probably read only by the applicant involved and persons already admitted to practice. The person entering law school, for whom the process of admission to the organized Bar is several years down the road, is the very person to whom statements of this kind are addressed and by whom they should be read.

This applicant's want of the requisite good moral character appears from his theft, perjury and bankruptcy.

THEFT

In 1977, while he was a first-semester law student, applicant was arrested at a Salem department store and charged with the theft of a shirt. Applicant was tried and at the close of the evidence the case was taken under advisement. Some time later, the charge against applicant was dismissed. In reviewing this application, the Disciplinary Review Board decided that applicant's arrest was not a valid objection to applicant's admission. In making this decision, the Board apparently focused on the fact that the case ended in dismissal.

[1] Applicant contends that the dismissal of the charge forecloses any further consideration of the incident against ***289** him. Of course, an arrest or a charge ending in dismissal does not establish that the accused committed the prohibited act. 3A J. Wigmore, Evidence s 980a (Chadbourne rev. 1970). As the United States Supreme Court has said:

> "The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense."

Schware v. Board of Bar Examiners, 353 U.S. 232, 241, 77 S.Ct. 752, 757, 1 L.Ed.2d 796, 803 (1957). On the other hand, dismissal does not preclude inquiry to ascertain whether an offense was committed. We recently considered a similar question in a proceeding concerning the conduct of a judge, In re Roth, 293 Or. 179, 645 P.2d 1064 (1982). There, criminal charges had been filed and later dismissed. The judge argued that the dismissal precluded our consideration of the charges. We rejected this contention, concluding that it was our duty to determine whether or not the accused had violated the law, regardless of whether criminal charges had been filed.

> "Had no criminal prosecution ever been instituted in connection with the judge's ****464** conduct brought to our attention by this record, we should still inquire whether he failed to comply with the criminal law."

293 Or. 179, 188, 645 P.2d 1064, 1070 (1982).

Similarly, in this case, the trial court's dismissal of the charges in no way bars our examination of the underlying events.

"(A)cquittal in a criminal action cannot be deemed to be res judicata here upon any issue, for the purpose and scope of an inquiry to determine an applicant's

character and fitness to become a member of the Bar are essentially different. * * * Conduct not descending to the level of guilt of the violation of a criminal statute may well present an insuperable obstacle to admission to the Bar if such conduct evinces a lack of that 'character and general fitness requisite for an attorney and counselor-at-law.' "

Application of Cassidy, 268 App.Div. 282, 287, 51 N.Y.S.2d 202, 206 (1944) (citations omitted), adhered to *290 270 App.Div. 1046, 63 N.Y.S.2d 840 (1946), aff'd 296 N.Y. 926, 73 N.E.2d 41 (1947). [3]

[2] We have examined both the transcript of applicant's trial and applicant's admissions to the Board of Bar Examiners, and we find that the record establishes that applicant took the shirt from the Salem department store. He avoided conviction by testifying at his trial that he had not intended to steal the shirt, but had merely forgotten to pay for it. In June, 1980, applicant met with three members of the Board of Bar Examiners (described as "the small board"), and admitted to them that he had lied in his trial. Later, under oath before the full Board of Bar Examiners in July, 1980, applicant again admitted that this testimony was not true, that, in truth, he intended to steal the shirt. Applicant's admissions provide the element missing at the trial and establish that applicant committed theft in the second degree. ORS 164.045.

PERJURY

The most serious allegation against applicant is that he committed perjury in his 1977 trial for theft. As indicated above, when applicant met with the small board in June, 1980, he told the board members that his testimony in the 1977 trial was not true. Subsequently, testifying under oath before the full Board of Bar Examiners, petitioner again admitted that he had not told the truth in his 1977 trial.

The giving of false testimony is rightly held in utter opprobrium by the legal system.

> *291 "Do trustworthy lawyers make false oaths? That question must be answered in the negative."

State ex rel. Grievance Committee v. Woerndle, 109 Or. 461, 470 at 476, 209 P. 604, 220 P. 744 at 746 (1923).

> "Of possible acts, few are so antagonistic to the objects of judicial administration as the intentional false swearing which seeks to baffle the search for truth, without which justice is impossible. Such swearing is a flagrant insult to the dignity of the court."

1 C. Chamberlayne, Modern Law of Evidence s 249 at 304 (1911); **465 In re Lenske, 269 Or. 146, 158-59, 523 P.2d 1262, 1267-68 (1974), cert denied 420 U.S. 908, 95 S.Ct. 827, 42 L.Ed.2d 838 (1975); In re Moynihan, 166 Or. 200, 111 P.2d 96 (1941); In re Ulmer, 208 F. 461 (N.D.Ohio 1913).

There has been much discussion in these proceedings as to whether or not applicant's statements were actually perjury. For the sake of clarity, we set forth the relevant portions of the transcript of the 1977 trial. In his unsworn opening statement, applicant said:

> "Yes, Your Honor. The defense doesn't dispute the material facts as stated in the opening statements by the Prosecutor. Defense will show outward through a presentation of information that there is no intent ?? (sic) motion to commit a misdemeanor."

Later in the trial, testifying under oath as a witness in his own behalf, applicant gave the following sworn testimony:

> "On the day of the incident, Your Honor, I was on my way to school and I looked at Meier & Frank under the bridge and looked at some of the shirts and decided to try them on because two of the shirts were made in Korea and I used to work at Meier & Frank and I am aware that some of the shirts are not cut for larger people and bought the shirt or

> rather I decided to wear the shirt and I took the price tag off and left the dressing room, hung one of the shirts up and there were several people in front of me checking out and then I got ready to pay for the shirt I only paid for the one that I had, that I didn't have on and because I had forgotten I was absorbed in what I was thinking about and I totally forgot about it until I got outside I was thinking about getting out to my car that I had parked in the manager's parking spot on the mezzanine level at the store and was thinking about that and some of the things I had ***292** to do at school because it was getting close to the end of the term and I got out on the mezzanine and just about the same time I was accosted by the store persons I thought about that I still had the shirt and I showed her the price tag and pulled out my wallet and told her I was going to buy it and the security person grabbed me by the arm and I became offended and in any case they were pretty deliberate in their efforts in that they wanted me to come back into the store so I went in and was asked what happened or was I going to pay for it something to that effect and then lots of information was taken and the police officer was called and I was arrested."

This testimony is obviously rambling and confused; we find it was an attempt to convince the judge that applicant had forgotten to pay for the shirt. Applicant's clear design was to deny an intent to commit theft. This testimony was material to the charge of theft. In his appearances before the small board and the Board of Bar Examiners, applicant admitted that this testimony was false. We find that these admitted facts establish by clear and convincing evidence that applicant committed perjury. ORS 162.065.

Arguing that his testimony is technically not perjury, applicant admits that he tried to mislead the trial court:

> "(The testimony is) rambling, purposefully evasive, indefinite, non-committal, ambiguous, and sometimes incoherent, * * *. The applicant is intelligent, articulate, has graduated from law school, passed the Bar exam his first try, * * *. The applicant wanted to muddle and confuse the record with a long-winded statement saying nothing and succeeded in doing so."

(Petitioner's Memorandum of Points and Authorities in Support of Applicant's Admission to the Bar, 3-4.) This effort to mislead the trial court is conduct sufficient to warrant our unequivocal condemnation. It is convincing evidence that applicant's sense of ethics is wanting. It is that sense of ethics with which we must be concerned. In re Alpert, 269 Or. 508, 514, 525 P.2d 1042, 1045 (1974); In re Lenske, supra.

***293** BANKRUPTCY

By filing bankruptcy in 1975, applicant discharged some $2,400 in student loans ****466** with which he had financed his under-graduate education.

[3] The fact that petitioner filed for bankruptcy, standing alone, is not a factor which we consider in determining his moral fitness. The bankruptcy statutes prevent a rule which would preclude applicant's admission to the Bar solely because he declared bankruptcy. However, an applicant's handling of financial affairs is regularly considered in determining moral fitness. See, e.g., In re Cheek, 246 Or. 433, 425 P.2d 763 (1967); In re Connor, 265 Ind. 610, 358 N.E.2d 120 (1976); In re O'Brien's Petition, 79 Conn. 46, 63 A. 777 (1906). The bankruptcy statutes do not prohibit examination of the circumstances surrounding bankruptcy, as these circumstances illustrate an applicant's judgment in handling serious financial obligations. [4]

The Supreme Court of Minnesota recently considered the application for admission of a person who had discharged student loans in bankruptcy. After reviewing the legal considerations pertinent to the evaluation of such bankruptcies, the court said:

> "We hold that applicants who flagrantly disregard the rights of others and default on serious financial obligations, such as student loans, are lacking in good moral character if the default is neglectful, irresponsible, and cannot ***294** be excused by a compelling hardship that is reasonably beyond the control of the applicant. Such hardship might include an unusual misfortune, a catastrophe, an over riding financial obligation, or unavoidable unemployment."

In re Gahan, 279 N.W.2d 826, 831 (Minn.1979). The Supreme Court of Florida formulated a similar standard in cases of two applicants who had discharged student loans in bankruptcy. Florida Bd. of Bar Examiners re Groot, 365 So.2d 164 (Fla.1978); Florida Bd. of Bar Examiners re GWL, 364 So.2d 454 (Fla.1978).

Examining the circumstances surrounding applicant's discharge of his student loans, we find no extraordinary hardship which would compel resort to bankruptcy. When he declared bankruptcy, applicant's current liabilities did exceed his current assets, but he acknowledged before the Board of Bar Examiners that he could have managed his debts, including his student loans, had he wished to do so. His own explanation of his resort to bankruptcy is that he felt that society owed him an education. At the time, applicant was employed in a steady position, with a gross annual income of approximately $10,000. He faced no catastrophe or unusual misfortune. Further, he made no effort to adjust, extend, or renegotiate his student loans. On the other hand, he reaffirmed several other debts, those on which his creditors held security over property which he wished to retain.

Applicant had a legal right to discharge his student loans in bankruptcy as he did, and our decision herein is not based on his exercise of that right. The circumstances of his bankruptcy, however, show a selfish exercise of legal rights and a disregard of moral responsibilities. The bankruptcy statutes prescribe only the criteria needed to discharge debts; they do not say what is required to demonstrate good moral character. ****467** Cf. Holmes, The Path of the Law, 10 Harv.L.Rev. 457, 459 (1897): "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict."

We need not decide whether we would find that applicant's moral character is wanting on the basis of his ***295** discharge of student loans alone. We declare to all attorneys and future applicants the importance of scrupulously honoring all financial obligations. With respect to this applicant, his discharge of student loans is a fact which we consider. [5]

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Applicant asserts that he has reformed himself; however, the fact that he was an adult when the actions complained of occurred causes us to approach this claim with caution. Applicant was 30 when he discharged his student loans in bankruptcy. The other acts came at an even more critical time. Applicant stole the shirt and perjured himself when he was a first-year law student. One who has set on that final stage of formal training for admission to the Bar is not still to be treated as a youth, who does not yet recognize and adhere to the rudimentary requirements of legal and moral behavior.

> "(M)embers of the bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as malum in se. It also includes conduct which all responsible attorneys would recognize as improper for a member of the profession."

In re Ruffalo, 390 U.S. 544, 555, 88 S.Ct. 1222, 1228, 20 L.Ed.2d 117, 125 (1968) (White, J., concurring). These same requirements attach also to law students, who will some day seek admission to the Bar.

Applicant would mimimize the theft and perjury allegations by noting that he volunteered the information about these matters to the Board of Bar Examiners. The record shows that his admissions were less soul-baring than he indicates. Our examination of the record leads us to find that applicant admitted his perjury because he believed that the Board of Bar Examiners had studied the transcript of his trial and had already discovered his perjury.

***296** Reviewing the record, we are left with the impression that applicant fails to appreciate the gravity of his conduct as it pertains to his moral character. We perceive a lack of candor in his explanations of his testimony in the 1977 trial and in his answers to questions as to whether or not that testimony was truthful. His responses are inconsistent, equivocal, and evasive. In the end, we are left with the impression that applicant does not fully accept responsibility for his actions.

Applicant has submitted letters from several members of the profession in support of his application. We are also aware of applicant's academic accomplishments and other positive qualities. He has successfully completed three years of law school and passed the Bar examination. In a case of this sort, however, this court's primary responsibility is to the public, to see that those who are admitted to the Bar have the sense of ethical responsibility and the maturity of character to withstand the many temptations which they will confront in the practice of law. If we are not convinced that an applicant can withstand these temptations, we would be remiss to admit the applicant. Doubt of consequence must be resolved in favor of the protection of the public. In re Alpert, supra. In this case, as in Alpert, we have such doubt.

That is not to say that we shall forever remain unconvinced of reformation. Experience teaches that true reformation does occur. See, e.g., ****468** In re Jolles, 235 Or. 262, 383 P.2d 388 (1963). With the passage of time, this applicant may mature; his insight may develop; he may be able to show that good moral character requisite to admission to the Bar.

We hold that the Oregon State Bar is the prevailing party and that it should recover its actual and necessary costs and disbursements incurred in this proceeding. ORS 9.535(4).

Application denied and judgment awarded for the Oregon State Bar for its actual and necessary costs and disbursements incurred in this proceeding.

All Citations

293 Or. 285, 647 P.2d 462

Footnotes

1 Oregon Laws 1981, Chapter 193, Section 7 amended ORS 9.220. That section now reads:

"An applicant for admission as attorney must apply to the Supreme Court and show that the applicant:

"* * * *

"(2)(a) Is a person of good moral character.

"(b) For purposes of this section and ORS 9.025, 9.070, 9.110, 9.130, 9.210, 9.250, 9.480 and 9.595, 'good moral character' means conduct not restricted to those acts that reflect moral turpitude, but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. The conduct in question should be rationally connected to the applicant's fitness to practice law."

No one in these proceedings contends that this new language changes the substantive requirements for admission to the bar, and we express no opinion on this question.

2 "One does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to 'life, liberty, and property' are in the professional keeping of lawyers. * * * From a profession charged with such responsibilities there must be exacted those qualities of truth-

speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.' "

Schware v. Board of Bar Examiners, 353 U.S. 232, 247, 77 S.Ct. 752, 760-61, 1 L.Ed.2d 796, 806 (1957) (Frankfurter, J. concurring). Many other courts have, in like manner, stressed that good moral character is a prerequisite to admission to the practice of law. See, e.g., Matter of Keenan, 314 Mass. 544, 50 N.E.2d 785 (1943); In re Farmer, 191 N.C. 235, 131 S.E. 661 (1926); In re Law Examination of 1926, 191 Wis. 359, 210 N.W. 710 (1926).

3 Accord, In re Schaeffer, 273 Or. 490, 541 P.2d 1400 (1975): The Bar considered a variety of traffic citations and applicant's handling of these, even though there is no record that these resulted in convictions. In re Lenske, 269 Or. 146, 158, 523 P.2d 1262, 1267 (1974): The accused was an attorney who, in two trials, gave conflicting testimony. At least one account was not true. The court said that even if the testimony was not perjurious, the conduct was unethical. Spears v. State Bar of California, 211 Cal. 183, 294 P. 697 (1930): Various charges had been brought against the applicant and then dismissed. The court looked beyond the charges to the underlying conduct. In re Stover, 65 Cal.App. 622, 224 P. 771 (1924): The applicant was a known "dice shark," had twice been arrested for cheating in dice games, and had had several other run-ins with the police, though none resulted in conviction. The court considered these facts in denying his admission. Petition of Goldman, 206 So.2d 643 (Fla.1968): The court looked to the circumstances which had led to an indictment against the applicant, even though the indictment was subsequently quashed. In re Monaghan, 122 Vt. 199, 167 A.2d 81 (1961): The court considered all charges that had been brought against applicant, regardless of the disposition of the charge.

4 The legislative history of the Bankruptcy Act indicates that Congress intended to bar a per se rule which would make filing in bankruptcy an automatic bar to a license or similar grant. Congress did not intend to preclude examination of the circumstances surrounding bankruptcy.

"The prohibition does not extend so far as to prohibit examination of the factors surrounding the bankruptcy, the imposition of financial responsibility rules if they are not imposed only on former bankrupts, or the examination of prospective financial condition or managerial ability. The purpose of the section is to prevent automatic reaction against an individual for availing himself of the protection of the bankruptcy laws. * * * (I)n those cases where the causes of bankruptcy are intimately connected with the license, grant, or employment in question, an examination into the circumstances surrounding the bankruptcy will permit governmental units to pursue appropriate regulatory policies and take appropriate action without funning afoul of bankruptcy policy." (Emphasis added)

H.R.Rep.No.95-595, 95th Cong. 1st Sess. at 165 (1977), reprinted in 5 U.S.Code Cong. & Admin.News, 95th Cong. 2d Sess. 5787, 5963, 6126 (1978).

5 We also note that the Bankruptcy Act of 1978 changed the law, restricting the right to discharge student loans. Under the current statutes, unless there is a showing of undue hardship, an individual must make payments on student loans for five years before they are subject to discharge in bankruptcy. See 11 U.S.C.A. s 523(a)(8).

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CALI Grammar Exercises

1. Go to the CALI website at www.cali.org
2. Click on "register" in the upper right corner
3. Go through the registration process. **The authorization code is SOUMETstu194 (case sensitive)**
4. Login once you have completed registration
5. In the search box, search for the word "Grammar" or you can look up the lessons alphabetically by name under "Lessons" and under "Legal Writing"

   - **The lessons you need to take are:**

     1. **Punctuation and Grammar Basics for Students by Wayne Schiess, and**
     2. **Punctuation and Grammar: Advanced by Wayne Schiess**

6. Each lesson takes approximately 45-50 minutes. You must score an 85% or higher ("passing score") on each lesson. If you do not, retake the lesson until you receive a passing score. You need to answer all questions within each lesson and take the quiz at the end of each lesson. You score is based on all of the questions within the lesson as well as your quiz score.
7. **Once you complete the lesson and receive a passing score, click on the "Finalize Score" button, then print the finalized score sheet to turn into your professor at Orientation.**