

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #025

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 5th day of May, 2009, are as follows:

PER CURIAM:

2006-OB-2387

IN RE: BRIAN D. FERGUSON
(Committee on Bar Admissions)

Guidry, J., on panel; Calogero C. J., retired, recused.

Accordingly, it is ordered that the application for admission be
and hereby is denied.
ADMISSION DENIED.

JOHNSON, J., dissents and assigns reasons.
KNOLL, J., dissents with reasons.
WEIMER, J., dissents and assigns reasons.

05/05/09

SUPREME COURT OF LOUISIANA

NO. 06-OB-2387

IN RE: BRIAN D. FERGUSON

ON APPLICATION FOR ADMISSION TO THE BAR

PER CURIAM*

The Committee on Bar Admissions (“Committee”) opposed the application of petitioner, Brian D. Ferguson, to sit for the Louisiana Bar Examination based on character and fitness concerns. In its correspondence to petitioner, the Committee cited two issues, specifically, petitioner’s delinquent credit accounts and a stipulated judgment rendered against him on a petition for domestic abuse protection filed by his former wife. We subsequently granted petitioner permission to sit for the bar exam, with the condition that upon his successful completion of the exam, he apply to the court for the appointment of a commissioner to take character and fitness evidence. *In re: Ferguson*, 05-0918 (La. 5/6/05), 901 So. 2d 1079.

Petitioner thereafter successfully passed the essay portion of the bar exam, and upon his application, we appointed a commissioner to take evidence and report to this court whether petitioner possesses the appropriate character and fitness to be admitted to the bar and allowed to practice law in the State of Louisiana. We also authorized the Office of Disciplinary Counsel (“ODC”) to conduct an investigation into petitioner’s qualifications to be admitted to the bar.

The commissioner conducted a character and fitness hearing in June 2008, pursuant to Supreme Court Rule XVII, § 9(D)(6). The commissioner received

* Guidry, J., on panel; Calogero, C.J., retired, recused.

documentary evidence and heard testimony given by petitioner and his witnesses on a variety of issues in addition to those raised by the Committee when petitioner was initially denied permission to sit for the bar exam, including allegations of misconduct by petitioner during law school as well as during his subsequent employment as a judicial law clerk.¹

At the conclusion of the hearing, the commissioner filed his report with this court, recommending that petitioner be conditionally admitted to the practice of law. The Committee objected to that recommendation, and oral argument was conducted before this court pursuant to Supreme Court Rule XVII, § 9(D)(11).

After hearing oral argument, reviewing the evidence, and considering the law, we conclude petitioner has failed to meet his burden of proving that he has “good moral character” to be admitted to the Louisiana State Bar Association. See Supreme Court Rule XVII, § 5(D).

Accordingly, it is ordered that the application for admission be and hereby is denied.

ADMISSION DENIED.

¹ One of the ODC’s witnesses was a law professor who was subpoenaed to testify regarding the allegations of academic misconduct. Petitioner objected to the professor’s testimony. The commissioner ruled that the professor would not be permitted to testify at the hearing, but that the ODC could proffer the testimony in deposition form. However, the commissioner then submitted his report to this court, along with the record of the matter, without waiting for the proffer to be obtained. Consequently, after taking the professor’s deposition and obtaining the transcript from the court reporter, the ODC filed a “Motion to File Proffer Into the Record.” We subsequently granted the motion and allowed the parties to file supplemental briefs addressing the professor’s testimony.

The purpose of the commissioner process in bar admission proceedings is to develop a record upon which this court can make a determination whether the applicant possesses good moral character and fitness to practice law. Strict adherence to the evidentiary and procedural codes is not required in such proceedings; the commissioner should “admit any material and relevant evidence which . . . is probative and which may be useful to the Court for its consideration and review.” Supreme Court Rule XVII, § 9(D)(7). Furthermore, any evidence excluded by the commissioner “may be proffered for review by the Court.” *Id.*

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JOHNSON, Justice, dissents and assigns reasons.

I respectfully dissent from the Court's denial of Petitioner's application for admission to the bar.

The Court has denied Petitioner's application for admission to the bar, finding that the Petitioner failed to meet his burden of proving that he has "good moral character" to be admitted to the Louisiana State Bar association pursuant to Supreme Court Rule XVII, §5(D). The Court's decision is primarily based on two allegations: academic misconduct relating to the remaining one credit hour Petitioner needed in order to obtain his law degree; and, misconduct during his employment as a judicial law clerk with former Judge Allen A. Krake.

According to the Commissioner's report, Petitioner participated in graduation ceremonies at Mississippi College School of Law ("MCSOL") in May of 2004, but lacked four credit hours to graduate. By August of 2004, Petitioner had competed

three credit hours, and he was allowed to write a research paper to obtain the last credit hour.

Regarding the allegation of academic misconduct, Petitioner admittedly resisted and procrastinated in writing the paper supervised by Professor Shelton Hand. When he finally submitted a first draft, Professor Hand found it to be poorly written and unacceptable. After more delay, Petitioner completed the assignment to Professor Hand's satisfaction, obtained the one credit hour and graduated.

The allegation of misconduct arose from a call Professor Hand subsequently received from Jimmy White, a MCSOL graduate, who was then employed as the first assistant district attorney ("ADA") in Colfax, Louisiana. Mr. White reported to Professor Hand that he had learned from another ADA that petitioner had tried to pay him to write his paper. The ADA in question, Scott Prudhomme, testified that he was asked by petitioner several times for advice on writing a paper, and that petitioner finally said, "Why don't you just write it for me? I'll give you \$500." Mr. Prudhomme did not accept the offer, and he acknowledged that petitioner probably did not even have \$500, considering he was working as a law clerk. Petitioner testified that he did not recall the conversation with Mr. Prudhomme, but if it did occur, it was said solely in a joking manner.

Professor Hand passed along the information from Mr. White to others at the

law school, including Assistant Dean Philip McIntosh, via email. Although Professor Hand never raised concerns about whether Petitioner wrote the paper prior to the call from Mr. White, at his deposition Professor Hand testified that he questioned whether Petitioner wrote the paper, since the final product bore no resemblance to the first draft, or other work Petitioner had done in the past. However, Professor Hand admitted that he did not actually know whether someone else had written the paper.

I agree with the Commissioner's finding that the record fails to prove that Petitioner's conversation with Scott Prudhomme was a serious negotiation, and was most likely a conversation in jest. Furthermore, Mr. Prudhomme did not testify that he wrote the paper, and there is no proof, outside of speculation and hearsay, that anyone other than Petitioner wrote the paper. In concluding that Petitioner lacks the honesty, trustworthiness, diligence and reliability required by Section 5(B) of Rule XVII, the majority apparently finds credence in the hearsay and unsupported allegations that Petitioner did not write the paper. In my view, the best evidence on the issue of academic misconduct is the certification letter signed by Dean Phillip McIntosh. As Assistant Dean in charge of academic affairs, it was Dean McIntosh's job to certify character and fitness, which he did on behalf of Petitioner.

Dean McIntosh testified that he had no specific knowledge of any improper acts by Petitioner. Further, McIntosh was fully aware of the allegations brought to

his attention by Professor Hand, but other than this hearsay, he testified that he had no independent knowledge of anything evidencing a lack of character in the manner in which Petitioner completed his education. Dean McIntosh's recommendations are based on his personal knowledge of Petitioner and the contents of his academic file, not on hearsay and unsupported allegations.

I also find no reliable evidence of Petitioner's misconduct during his employment with former Judge Krake. Petitioner began working for Judge Allen Krake as law clerk in August 2004. Petitioner was terminated in June 2005, effective July 31, 2005. Judge Krake's position was that petitioner was terminated for misconduct for claiming that he possessed a law degree when he was hired, and for allegedly forging Judge Krake's signature on a letter increasing Petitioner's salary. Petitioner denied the allegations, and asserted that his termination was pretextual and in retaliation for his cooperation with the Judiciary Commission's investigation against Judge Krake arising out of the Judge's alcoholism.¹ Petitioner believed that he was terminated because he twice testified under subpoena in the Judiciary

¹ In the Spring of 2005, Petitioner placed an anonymous call to the Judiciary Commission to report drunkenness and misconduct on the part of Judge Krake. The Commission identified Petitioner's number from the Caller ID. Petitioner was instructed to file a complaint, and he reluctantly agreed to cooperate with the Judiciary Commission.

Commission proceedings against Judge Krake.²

I find no reliable proof that Petitioner signed the pay raise letter. Rather, I agree with the Commissioner's finding that Judge Krake actually signed the letter. The Bar Committee apparently chose not to call Judge Krake to testify about whether his signature appeared on the letter. No other credible evidence was presented to prove that this was not the Judge's signature. More importantly, the Commissioner noted that it was only after Petitioner cooperated with the Judiciary Commission that the pay raise letter was questioned.

The evidence against Petitioner consists primarily of hearsay and speculation. With no actual proof of the alleged misconduct, I cannot agree with the majority's decision to deny Petitioner admission to the bar. A review of the record, and lack of credible evidence supporting the allegations, leads me to agree with the Commissioner that the Petitioner's problems arose not due to actual misconduct, but, rather, out of his actions in reporting Judge Krake to the Judiciary Commission and his willingness to cooperate with the Judiciary Commission. The testimony reflects that some court personnel were covering up for Judge Krake, and that although petitioner fully cooperated, he was very fearful of retaliation. The testimony reflects

² Petitioner stated that Judge Krake cut off communication with him around the time of the testimony (during the Spring and early Summer of 2005) In addition, he was forced to sign a resignation letter by Judge Krake, who told him he "should have been smart."

that the information Petitioner provided was absolutely essential to the investigation and to this Court's subsequent actions against Judge Krake.³ Notably, petitioner was fired after his sworn testimony taken by the Judiciary Commission.

For these reasons, I respectfully dissent.

³ In November of 2005, this Court formally disqualified Judge Krake from exercising judicial functions on an interim basis. *In re: Krake*, 05-2213 (La. 11/16/05), 914 So. 2d 1112. Subsequently, the Judiciary Commission instituted proceedings against Judge Krake, at which time Petitioner testified as a witness concerning Judge Krake's conduct in the office. These proceedings ultimately resulted in this Court suspending Judge Krake until the end of his term, with all but six months deferred. *In re: Krake*, 06-1658 (La. 10/27/06), 942 So. 2d 18. Judge Krake later failed to comply with the conditions of probation, and this Court ordered that the deferred portion of the suspension be made executory. *In re: Krake*, 06-1658 (La. 2/26/08), 976 So. 2d 162.

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KNOLL, J., dissents.

With all due respect, I dissent and would conditionally admit petitioner.

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On Application for Admission to the Bar

WEIMER, J., dissenting.

Based on the report of the commissioner who conducted the hearing and recommended that the petitioner be conditionally admitted to the practice of law, I would conditionally admit the petitioner to the practice of law subject to a five-year period of probation.