

ORIGINAL

The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

In re: Application of
Christopher Carroll Kloeker

Case No. 533

13-0438

FINDINGS OF FACT AND
RECOMMENDATION OF THE BOARD OF
COMMISSIONERS ON CHARACTER AND
FITNESS OF THE SUPREME COURT OF
OHIO

This matter is before the board pursuant to its *sua sponte* investigatory authority. Gov. Bar R. I, Sec. 10(B)(2)(e).

A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on February 4, 2013.

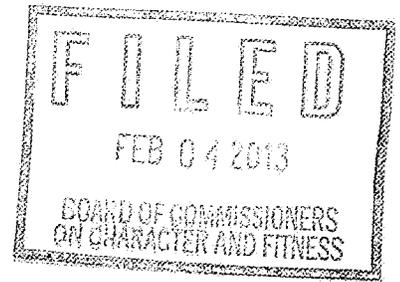
Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on February 8, 2013. By unanimous vote, the board adopts the panel report as attached, including its findings of fact and recommendation of disapproval, with the clarification that, upon reapplication, the applicant be required to file a new Application to Register as a Candidate for Admission to the Practice of Law for submission to the National Conference of Bar Examiners upon reapplication.

Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant be disapproved; that he be permitted to apply for the July 2014 bar examination by filing a new Application to Register as a Candidate for Admission to the Practice of Law and an Application to Take the Bar Examination; and that upon reapplication, he undergo a complete character and fitness investigation, including an investigation and report by the National Conference of Bar Examiners, in order to determine whether he possesses the requisite character, fitness, and moral qualifications for admission to the practice of law in Ohio.

FILED
MAR 19 2013
CLERK OF COURT
SUPREME COURT OF OHIO

T. C. Hicks
TODD HICKS, Chair, Board of Commissioners
on Character and Fitness for the Supreme Court
of Ohio

BEFORE THE BOARD OF COMMISSIONERS
ON CHARACTER AND FITNESS OF
THE SUPREME COURT OF OHIO



IN RE:)
)
APPLICATION OF) CASE NO. 533
CHRISTOPHER CARROLL KLOEKER)

REPORT AND RECOMMENDATION OF THE PANEL

Introduction

This matter is before the Board pursuant to its *sua sponte* investigatory authority. The Panel, comprising of Scott McBride, Gregory Arnold, and John Fairweather (Chairperson) conducted a hearing on December 7, 2012. Mr. Kloeker, the Applicant, was represented by George Jonson of Cincinnati and the Hamilton County Bar Association was represented by Adam Fogelman.

While attending the University of Cincinnati College of Law, the Applicant submitted his Candidate Registration Application in November 2010, and was interviewed by the Hamilton County Bar Association in June 2011. The interviewers addressed and dispensed with certain issues relating to alcohol abuse and recommended approval of Mr. Kloeker's application.

The Board's Review Committee pulled the Applicant's file and, upon receipt of the Applicant's Bar Application, dated March 26, 2012 (to take the July 2012 Bar Examination), ordered a *sua sponte* investigation.

Statement of the Case

Mr. Kloeker has done well academically. He graduated *magna cum laude* in 2008 from Northern Kentucky University with a double major (history and philosophy). He attended the University of Cincinnati School of Law and graduated in 2012 with a 3.5 grade point average.

As disclosed in his original registration application, Mr. Kloeker had a series of criminal and/or traffic violations:

- 07/15/04: Applicant pled guilty to operating a motor vehicle under the influence of alcohol (.08). It was his first offense.
- 12/25/05: Applicant was charged with possession of marijuana and use/possession of drug paraphernalia. It was his first offense. He completed a diversion program in January of 2006 and charges were dismissed.
- 03/08/08: Applicant was arrested for alcohol intoxication in a public place and disorderly conduct. The charges were dismissed by motion of the prosecution.
- 08/16/08: While drinking with friends at a bar, the Applicant fell from a deck behind the establishment and broke both his left and right tibia. The Applicant was charged with disorderly conduct. He admitted to being intoxicated at the time. The charges were dismissed.
- 03/15/09: Applicant was charged with operating a motor vehicle while under the influence of alcohol. The Applicant pled guilty to the charge. The Applicant entered an outpatient substance abuse clinic and successfully completed the treatment program.

As noted above, Mr. Kloeker was interviewed by the Hamilton County Bar Association in June 2011. The incidences outlined above were the focus of the interview. Mr. Kloeker did not disclose in his application that he had used cocaine a "few times" in college and had taken Benzodiazepine, Ativan, or Diazepine on prior occasions as well. (This information was provided by the Applicant during his testimony at the hearing on December 7, 2012.) As explained by Mr. Kloeker, he did not disclose these matters in his application inasmuch as

Question 25 on the application asked whether the Applicant was addicted to or an abuser of any chemical substance. Mr. Kloeker indicated “no” on his application. He explained at the hearing that he did not believe (at the time he completed the application) that he had a chemical substance abuse issue and was not addicted to either cocaine or prescription pills.

The Hamilton Bar Association approved the application but recommended that he be interviewed by OLAP.

In March 2012, the Applicant applied to take the bar examination and submitted his supplemental character questionnaire to the application. He disclosed the following matters that the panel found particularly troubling.

- On October 2011, Mr. Kloeker, while playing softball, re-aggravated an old ankle injury. According to the Applicant, in order to treat the pain, he purchased Oxycontin from a friend over the next 4-6 weeks. This was during the first semester of his third year in law school. During this same time period, on two occasions, when he could not obtain the Oxycontin, he purchased heroin from the same friend.
- In November 2011, he realized that he had become physically dependent. “I had a problem, that I was physically dependent upon it, that working 40 hours and going to school full-time became difficult without the drug.”

The Applicant sought treatment from a Dr. Joseph Daugherty, III, M.D. He was diagnosed as having “Opioid type dependence.” Dr. Daugherty prescribed Suboxone. Mr. Kloeker continued taking that medication until October 2012. He still sees Dr. Daugherty once every two months for monitoring purposes.

The Applicant's sobriety date is November 27, 2011. Since that time, he has not used any opiates or any other illegal substance. He has refrained from drinking alcohol or ingesting any mood altering drug (prescription or otherwise) since that time.

Turning to the Applicant's OLAP contract – it was recommended to Mr. Kloeker during his interviews with the Hamilton County Bar Association in the summer of 2011 that he seek an OLAP assessment. He did not schedule an assessment until April of 2012 and did not enter into an OLAP contract until May of 2012. He explained the lapse of time as follows: "I was working 40 hours a week and taking a full class load including winter courses and since OLAP was understaffed, there was no Cincinnati branch and so I had to drive to Columbus to meet them. There were scheduling conflicts."

Ultimately, he entered into the contract and complied with the three main requirements: (1) he attended 114 AA meetings in the first ninety days; (2) he currently attends six AA meetings a week (the contract requires him to make three meetings per week); and (3) he is on Step 9 of the 12 Step Program. The OLAP contract, by its terms, remains in effect through May 2015.

Recommendation

It is clear to the Panel that two matters stand in the way of Mr. Kloeker's taking the Bar Examination. First, Mr. Kloeker has a substance abuse problem. He admits it, and it is clear that he has been addicted to Oxycontin (and possibly heroin) as recently as November 2011. Given his history of substance abuse, the Panel believes more time is needed to discern whether the Applicant is fit to practice law and able to perform the duties entrusted to him as a lawyer. Second, the Panel is deeply concerned with the fact that Mr. Kloeker, again as recently as November 2011 – while he was a third year law student – engaged in felonious activity (i.e. the

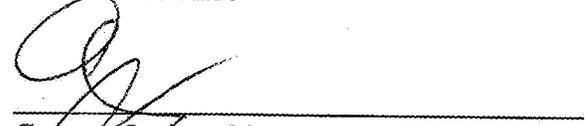
possession of heroin). The Panel is mindful that this activity was due solely to his drug abuse problems, but the committing of a crime – while one is studying to become a lawyer – is difficult to reconcile. Based on the record outlined above, the Panel recommends that Mr. Kloeker's current application be denied and he be permitted to re-apply to take the Ohio Bar Examination scheduled for July 2014.



John C. Fairweather (Chairperson)



G. Scott McBride



Gregory L. Arnold

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