

# LITIGATION UPDATE

by Fred P. Parker III and Jill J. Karofsky

## CASES REPORTED:

### CHARACTER AND FITNESS

**Plagiarism; law school suspension; lack of candor**

*In re White*, 656 S.E.2d 527 (Ga. 2008)

**Financial misconduct (embezzlement); failure to appear at a hearing**

*In re Bonnetti*, 117 Ohio St. 3d 113 (2007)

**Felony convictions (bank fraud, bankruptcy fraud, money laundering)**

*In re Coggin*, S. Ct. BA 2007-105 (V.I. 2008)

**Failure to disclose on bar application; subsequent discipline by the bar**

*In re O'Neill*, 285 Kan. 474 (2007)

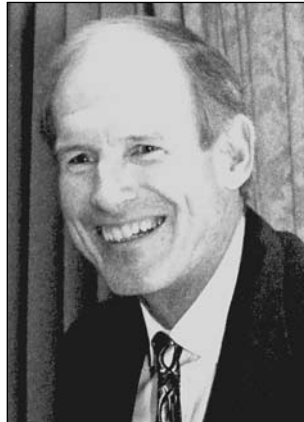
### READMISSION

*Redden v. Arkansas State Board of Bar Examiners*, \_\_\_ S.W.2d \_\_\_, 371 Ark. 584, 2007 WL 4260967 (2007)

### CONDITIONAL ADMISSION

**Rehabilitation; substance abuse**

*In re Barnett*, 959 So. 2d 234 (Fla. 2007)



## IMMUNITY

**Rooker-Feldman doctrine; quasi-judicial or qualified immunity**

*Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008)

## CHARACTER AND FITNESS

**Plagiarism; law school suspension; lack of candor**

*In re White*, 656 S.E.2d 527 (Ga. 2008)

In October 2005 Willie Jay White applied to sit for the Georgia Bar Examination. In his application, White disclosed information concerning a one-year academic suspension from law school he had received for plagiarism. White had been accused of plagiarism during his second year after he turned in a paper in his advanced torts

class that was a virtual verbatim reproduction of sections from five previously published sources, none of which had been cited in the paper.

The Georgia Board to Determine Fitness of Bar Applicants conducted an investigation into White's plagiarism incident. During the investigation process, the Board was troubled by White's lack of candor. While the Board gave White several opportunities to explain his conduct, he declined to do

so. At the end of the investigation, the Board voted tentatively to deny White's certification of fitness to practice law.

White was granted a formal hearing and a hearing officer was appointed to review the matter. At the hearing, White continued to refuse to take responsibility for his behavior by failing to admit that he deliberately copied published materials, altered them slightly, and submitted them as his own work in a 35-page paper. After the hearing, the hearing officer concluded that White's account of the plagiarism incident was not credible, White had not accepted full responsibility for his actions, and White did not possess the requisite character and fitness to be a prospective member of the bar. The hearing officer recommended final denial of White's application and the Board adopted the recommendation.

The Supreme Court of Georgia reviewed the case and agreed with the factual findings and conclusions of the hearing officer and the Board. The court noted that because White had never accepted responsibility for his actions, he had not been rehabilitated. The court held that White lacked "the integrity, character, and moral fitness required for admission to the Georgia Bar," and affirmed the decision to deny his application.

**Financial misconduct (embezzlement); failure to appear at a hearing**

*In re Bonnetti*, 117 Ohio St. 3d 113 (2007)

Brian Bonnetti received his law degree in September 2003 and was unsuccessful in multiple attempts to pass the Ohio Bar Examination. His most recent application was for the February 2006 examination. The Columbus Bar Association's Admissions Committee reviewed his application and approved his character and fitness.

However, in September 2005, after Bonnetti had been approved to take the bar examination, the U.S. Department of the Treasury, Office of the Comptroller, found that Bonnetti had misappropriated money while working for a bank in Cleveland. When this was discovered, the Ohio Office of Bar Admissions removed Bonnetti's name from the February 2006 list of examinees and scheduled a hearing.

It was determined that Bonnetti had used his position as a service representative for the bank to misappropriate loan proceeds. Over a period of time he had diverted funds from 13 loans he had made to customers. The loan documents were falsified to conceal his misconduct, which resulted in a loss to the bank of more than \$84,000 and a gain to Bonnetti of over \$19,000. He was ordered to make restitution and to pay a monetary penalty and was barred from working in the banking industry.

In January 2006 Bonnetti emailed the Office of Bar Admissions to furnish a new address, but he did not reply to return emails or to phone calls and letters to the two addresses in his file. He did not respond to the Notice of Hearing. Because he failed to provide requested information and cooperate in the proceedings before the Board, the panel recommended that his application not be approved. The Board adopted this recommendation.

On review, the Ohio Supreme Court stated that since Bonnetti had not participated in the character and fitness review process, he could not sustain his burden of proof to show that he was qualified for bar admission. The court accepted the Board's recommendation to disapprove Bonnetti's application to take the bar examination and to be admitted to the practice of law in Ohio.

**Felony convictions (bank fraud, bankruptcy fraud, money laundering)**

*In re Coggin*, S. Ct. BA 2007-105 (V.I. 2008)

In February 2005, John Coggin, a member of the Alabama Bar, passed the examination for admission to the U.S. Virgin Islands Bar. He was asked to provide additional materials relating to his disclosed prior felony convictions. In May 2007 he appeared before the U.S. Virgin Islands Committee of Bar Examiners, which issued findings and a recommendation that Coggin's application be denied.

The Committee found that in February 1996 Coggin had pled guilty in the U.S. District Court for the Northern District of Alabama to a charge of making false statements to the IRS. He had admitted to altering a cancelled check to show that he had paid \$7,253 to make full settlement of his 1986 taxes when in fact the check presented to the IRS was for only \$1,253. Coggin also pled guilty to bank fraud, admitting that he had presented seven false financial statements to a bank in Alabama, defrauding the bank of over \$36,000 between 1989 and 1994. He was sentenced to active time and restitution but he did not repay the bank. Coggin consented to disbarment in 1996. Upon his release from prison and in spite of his disbarment, he secured employment in June 1996 with Stewart Lubricants and Service Company (SLS) as the company's Chief Financial Officer and legal counsel. Coggin claimed that he acted only as the CFO for SLS. Coggin and

SLS disputed whether the president of SLS knew of his disbarment prior to the execution of his employment agreement, which Coggin had drafted. In 1999, Coggin was charged with bankruptcy fraud, with making a false statement to a U.S. probation officer, and with money laundering for hiding over \$225,000 in assets during a bankruptcy proceeding. He was sentenced to three years in prison and three years of probation and was released from prison in January

THE SUPREME COURT OF THE VIRGIN ISLANDS REVIEWED THE RECORD *DE NOVO* AND NOTED THAT GOOD MORAL CHARACTER WAS "TRADITIONALLY DEFINED AS THE ABSENCE OF CONDUCT IMBUE WITH ELEMENTS OF MORAL TURPITUDE" AND INCLUDED "QUALITIES OF HONESTY, FAIRNESS, CANDOR, TRUSTWORTHINESS, OBSERVANCE OF FIDUCIARY RESPONSIBILITY, RESPECT FOR AND OBEDIENCE TO THE LAWS OF THE STATE AND THE NATION AND RESPECT FOR THE RIGHTS OF OTHERS AND FOR THE JUDICIAL PROCESS." THE COURT AGREED WITH THE COMMITTEE'S CONCLUSION THAT COGGIN LACKED THE REQUISITE CHARACTER FOR MEMBERSHIP IN THE VIRGIN ISLANDS BAR.

2002. He claimed that he had retired from SLS in 1999. Following his second conviction he sued SLS for retirement or severance pay pursuant to his contract. He was reinstated to the Alabama Bar in 2004.

The Supreme Court of the Virgin Islands reviewed the record *de novo* and noted that good moral character was “traditionally defined as the absence of conduct imbued with elements of moral turpitude” and included “qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.” The court agreed with the Committee’s conclusion that Coggin lacked the requisite character for membership in the Virgin Islands Bar, stating that his bank fraud felony conviction involved seven misrepresentations over a period of five years and was not an isolated incident. The court added that the bankruptcy fraud, bank fraud, money laundering, and false statements reflected adversely on his fitness to practice law. These crimes revealed him to be “dishonest, untrustworthy, disrespectful, and disobedient to the laws of the state and nation.” Even while recognizing that the Alabama Bar had reinstated Coggin’s bar license, the court was not convinced of Coggin’s good moral character. The court concluded, “The combination of [Coggin’s] felony convictions for fraud, the drafting of his own employment con-

tract to his employer’s detriment, and his continued disregard for judicial process, evidenced by his failure to pay restitution to the bank he defrauded, demonstrate to this Court that Coggin is unfit to practice law in the Virgin Islands.” The court denied Coggin’s application.

**Failure to disclose on bar application; subsequent discipline by the bar**

*In re O’Neill*, 285 Kan. 474 (2007)

Thomas O’Neill was admitted to practice in Kansas in 1986. The court temporarily suspended his license to practice in January 2006 based on a formal complaint charging him with violation of the Kansas Rules of Professional Conduct because of a felony DUI conviction. The offense was charged as a felony because O’Neill had been previously twice convicted of DUI. He had been convicted in 2003, which conviction was upheld on appeal. While that felony conviction was on appeal, he was charged with another DUI in 2005 and pled to a misdemeanor charge. A review of O’Neill’s entire record brought to light that he had had several charges and convictions prior to his admission to the bar. On his bar application, in the answer to the question as to whether he had ever been summoned, arrested, taken into custody, indicted, convicted, or charged with or had ever pled guilty to the violation of any law or ordinance, he answered “yes” and attached statements indicating two convictions for reckless driving in 1981.

A more thorough review of his record before the Kansas Disciplinary Board revealed that in 1974 O'Neill had been convicted of the sale and cultivation or distribution of hallucinogenic drugs, a conviction which was later expunged. In 1978 he was convicted of driving under the influence. Again in 1978 he was convicted of the misdemeanor offense of possession of hallucinogenic drugs. Once in 1983 and three times in 1985, he was arrested for DUI and was convicted once. The disciplinary hearing panel was not unanimous in its recommendation for discipline; a majority recommended that O'Neill be indefinitely suspended, but one member voted for disbarment.

The Kansas Supreme Court, in reviewing the recommendation, noted O'Neill's intentional failure to disclose the seven arrests and four convictions prior to his being admitted to the Kansas Bar, calling this behavior a serious violation of his duty to disclose. The court said that these arrests and convictions might have remained undiscovered for years but for the 2003 felony DUI offense.

O'Neill had submitted a letter from the executive director of the Kansas Lawyers Assistance Program, which stated that O'Neill had been sober for five years. The executive director was not aware of the most recent DUI charges because O'Neill had not told him of his relapse. The court concluded that through the nondisclosures and the false recommendations that O'Neill had obtained and submitted, he had hoped to avoid serious discipline. However, the court found that O'Neill's conduct demonstrated that he was prone to deception. The 2003 and 2005 DUI convictions also were considered by the court when it ordered that O'Neill be indefinitely suspended from the practice of law in Kansas.

## READMISSION

*Redden v. Arkansas State Board of Bar Examiners*,  
\_\_\_ S.W.2d \_\_\_, 371 Ark. 584, 2007 WL 4260967  
(2007)

Pervis Redden was disbarred from the Arkansas Bar in 2000 for several violations of the Arkansas Rules of Professional Conduct, some of which involved financial mismanagement and commingling of funds with client trust funds. Redden filed a notice of appeal, but the appeal was never perfected. In October 2005 he sought readmission from the Arkansas Board of Bar Examiners, which recommended that Redden not be readmitted.

On review, the Arkansas Supreme Court stated that much of Redden's argument was based on alleged errors committed by the court in his 2000 disbarment proceeding, but that since Redden had failed to perfect his appeal, the decision in that case was final and was not subject to collateral attack or relitigation. The issue before the court was whether the Board was clearly erroneous in finding that Redden, in his application for readmission, had failed to establish good moral character.

Along with his application for readmission, Redden had submitted to the Board a letter stating that he had reimbursed all the parties involved in his previous misconduct to the best of his knowledge. However, two of the individuals financially damaged by Redden's misconduct filed complaints with the Arkansas Committee on Professional Conduct. Redden had borrowed money from one of the complainants and failed to repay the loan and had misappropriated funds due to the other complainant. Restitution to both parties was made after Redden's October 2005 letter, but not until after the secretary of the Board raised the issue. The Board concluded that the October 2005 letter was either

intentionally deceptive or grossly negligent and that in either case the misrepresentation reflected adversely on Redden's honesty and trustworthiness.

The court said that it could not ignore the similarity between the misrepresentations in Redden's October 2005 letter and the lapses in judgment that gave rise to his disbarment in the first place. Redden's attempt to re-argue the disbarment only served to reinforce the position he took at the time, one of trying to avoid the consequences of his actions. He allowed his own interests to repeatedly prevail over those of his clients and he also attempted to hide behind his bankruptcy and argue that while he still owed his clients money, that duty was discharged by his bankruptcy. Redden claimed that the Board discriminated against him as a bankruptcy debtor. The court stated that he was mistaken and that he was "being asked to abide by the fiduciary obligations . . . made to his clients and the standards that he agreed to assume when he took the oath of an attorney and became an officer of the court." The court noted that while Redden had apparently reimbursed his former clients and had done so in the face of financial difficulties, it appeared that he had only "done so haphazardly and grudgingly." The court found no error by the Board and affirmed its decision to not readmit Redden.

THE BOARD CONCLUDED THAT THE OCTOBER 2005 LETTER WAS EITHER INTENTIONALLY DECEPTIVE OR GROSSLY NEGLIGENT AND THAT IN EITHER CASE THE MISREPRESENTATION REFLECTED ADVERSELY ON REDDEN'S HONESTY AND TRUSTWORTHINESS. . . . THE COURT SAID THAT IT COULD NOT IGNORE THE SIMILARITY BETWEEN THE MISREPRESENTATIONS IN REDDEN'S OCTOBER 2005 LETTER AND THE LAPSES IN JUDGMENT THAT GAVE RISE TO HIS DISBARMENT IN THE FIRST PLACE. REDDEN'S ATTEMPT TO RE-ARGUE THE DISBARMENT ONLY SERVED TO REINFORCE THE POSITION HE TOOK AT THE TIME, ONE OF TRYING TO AVOID THE CONSEQUENCES OF HIS ACTIONS.

## CONDITIONAL ADMISSION

### Rehabilitation; substance abuse

*In re Barnett*, 959 So. 2d 234 (Fla. 2007)

Mark Barnett was admitted to the Florida Bar in October 1988. In 1997 he filed an uncontested petition to resign in lieu of disciplinary proceedings. In 2004 he filed an application for readmission with the Florida Board of Bar Examiners. The Board conducted an investigation of Barnett's background and served him with five specifications detailing incidents in his past that reflected negatively on his character and fitness to practice law. Barnett filed answers to the specifications, and a public hearing was held on these specifications.

Specification 1 stated that at the time Barnett filed his petition for disciplinary resignation, he was under emergency suspension from the Florida Bar because of the disciplinary cases pending against him, including a charge that he had misappropriated client funds and had failed to hold client funds in a separate trust account. Barnett was suspended from the Florida Bar and ordered to pay restitution to his clients and to reimburse the Bar for the cost of the hearing. Specification 2 alleged that Barnett failed to stop at a law enforcement checkpoint because he had been on a heroin binge for four days. When he finally stopped, he was arrested and charged with driving

under the influence, battery on a law enforcement officer, possession of cocaine, and resisting arrest with violence. Although the charges were dropped, all of the charges except that of battery on an officer were refiled. Following the trial, Barnett was placed on probation for 18 months, his driver's license was suspended, and he was ordered to pay a fine. Specification 3 alleged that Barnett failed to timely file federal income taxes from 1993 through 1995 and from 1998 through 2003. Specification 4 alleged that Barnett had been sued by an individual who had loaned him money that was never repaid. A judgment was obtained against him, which remained unsatisfied. Specification 5 alleged that as a result of an automobile accident, a default judgment was entered against Barnett for over \$5,000. The Board found that all of the specifications had been proven and that Barnett's conduct was collectively disqualifying.

In his answers to the specifications, Barnett testified that he had been a regular user of cocaine when he dropped out of college in 1980 and that a short time later, in 1981, he began using heroin. Despite his heroin use, he returned to college and completed his undergraduate degree in 1983. In January 1985, when he entered law school, he was a regular user of heroin and continued to use it even when he was employed by the attorney general's office in Florida.

After his disciplinary resignation, Barnett began attending Alcoholics Anonymous meetings and spent time in detoxification programs. Barnett testified about his rehabilitation activity since his resignation from the Bar, including participation and service in Alcoholics Anonymous, the Florida Lawyers Assistance (FLA) program, and religious programs, and including repayment of the unsatisfied judgments against him. Several witnesses also

testified on Barnett's behalf. The Board concluded that Barnett's evidence established rehabilitation and it recognized that his nine-year record of sobriety would meet the requirement of conditional admission. The Board recommended and Barnett agreed that the probationary period and conditional admission should include several conditions, including continued abstinence from alcohol and controlled substances and compliance with his FLA contract.

On review, the Florida Supreme Court agreed with the Board that Barnett's rehabilitation evidence was sufficient to overcome his past misconduct. He had made restitution to those he had injured and had satisfied his financial obligations. The court agreed with the Board that Barnett's admission should be conditional for three years. Four of the nine justices dissented in this decision, with one dissenter stating that the conditional admission process should be reserved for first-time applicants only.

## IMMUNITY

### ***Rooker-Feldman doctrine; quasi-judicial or qualified immunity***

*Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008)

Frank Lawrence graduated from an accredited Michigan law school. In 2001 he passed the Michigan Bar Examination and applied to become a member of the Michigan Bar; he later withdrew his application.

In 2003 Lawrence filed a federal lawsuit against the Michigan Board of Law Examiners, the State Bar of Michigan and certain of its officials and employees, and the justices of the Michigan Supreme Court. Lawrence sought declarations that certain rules of the state bar were unconstitutional. He also alleged that the state bar had violated his First and Fourteenth Amendment rights when processing his 2001 bar application. The case was dismissed for var-

ious reasons. (See 75 BAR EXAMINER 3:39 (Aug. 2006) for an explanation of the earlier case and Lawrence's unsuccessful appeal.)

In 2003 Lawrence began operating a website that he called "StateBarWatch." He used the site to actively criticize the Michigan Board of Law Examiners and the Michigan State Bar for alleged dishonesty in the Michigan attorney licensing system.

Lawrence reapplied to the Michigan Bar in August 2004. In August 2005, he was interviewed by three members of the Michigan Character and Fitness Committee. At the interview, Lawrence admitted having little respect for the Michigan state court system because, in his opinion, it failed to adequately protect individuals' constitutional rights. He said that he believed that the federal courts were the "guardians of the Constitution."

After the interview, the Character and Fitness Committee recommended to the Michigan State Bar that Lawrence not be admitted because he lacked the requisite character and fitness to practice law. The Committee said that it was "concerned about providing a law license to someone who, even before he has handled his first case as a member of the bar, has effectively written off such a huge component of the justice system."

Following the Committee's recommendation, Lawrence made several communications to the employers of the Committee members in which he complained about how poorly he believed the Committee had treated him.

Lawrence requested and was granted a hearing before the Michigan Board of Law Examiners in April 2006. During the hearing, Lawrence denied that his contacting the employers of the

various Character and Fitness Committee members was inappropriate.

In June 2006, the Board denied Lawrence's application. Lawrence did not seek a review of the decision in the Michigan Supreme Court; rather, he filed a complaint in the U.S. District Court for the Western District of Michigan in September 2006. In the complaint, Lawrence named as defendants the executive director of the State Bar of Michigan, the president of the Michigan Board of Law Examiners, and the members of the Michigan Character and Fitness Committee who had interviewed him.

Lawrence claimed that the denial of his bar application violated his First and Fourteenth Amendment rights. He filed three counts. In the first, he sought declaratory and injunctive relief requiring the defendants to issue him a license to practice. Second, and in the alternative, he sought prospective injunctive relief barring the defendants from denying his future bar applications on allegedly unlawful First Amendment grounds. Third, Lawrence sought damages from the three named individuals on the Character and Fitness Committee for their alleged retaliation against him by issuing an unfavorable character and fitness recommendation based on his expressed views of the Michigan court system.

The federal district court granted the defendants' motion to dismiss. The court ruled that the first two counts were barred by the *Rooker-Feldman* doctrine. The third count was barred because, according to the court, the Character and Fitness Committee members were entitled to absolute quasi-judicial immunity or, alternatively, qualified immunity. (See 76 BAR EXAMINER 1:43 (Feb. 2007) for a discussion of the district court decision.) Lawrence appealed to the U.S. Court of Appeals for the Sixth Circuit.



In its decision, the Sixth Circuit began by reviewing the *Rooker-Feldman* doctrine, a doctrine based on two U.S. Supreme Court cases interpreting 28 U.S.C. § 1257(a), which states that a final judgment of the highest court of a state may be reviewed by the United States Supreme Court by writ of certiorari. The *Rooker-Feldman* doctrine is predicated on the negative inference that if appellate court review of such state judgments is vested in the U.S. Supreme Court, then such review may not be had in the lower federal courts.

The court applied the *Rooker-Feldman* analysis to Lawrence's first claim that his First and Fourteenth Amendment rights had been violated because his application to the Michigan Bar was denied. The court ruled that this claim was a direct attack on a state court judgment and, consequently, barred by the *Rooker-Feldman* doctrine.

In assessing Lawrence's second claim, in which he sought prospective injunctive relief barring the defendants from denying his future bar applications, the court decided that the claim was ripe but also concluded that it, too, was barred by *Rooker-Feldman*. The court explained, "[W]hile the redress Lawrence

seeks in his second cause of action is forward-looking, the claim is nonetheless premised on the same past injury: the allegedly unlawful reasoning used to deny him bar admission in 2006."

The court dismissed Lawrence's final claim, in which he sought damages from the three Character and Fitness Committee members who Lawrence alleged had retaliated against him by issuing an unfavorable character and fitness recommendation based on his views of the Michigan court system. The court found that the members of the Committee were agents of the Michigan Board of Law Examiners and the Michigan Supreme Court, which entitled them to absolute immunity for their actions in investigating Lawrence's character and fitness to practice law and in making recommendations about the same.

In conclusion, the Sixth Circuit affirmed the decision of the federal district court dismissing the action. ■

FRED P. PARKER III is the Executive Director of the Board of Law Examiners of the State of North Carolina.

JILL J. KAROFKY is the Director of Human Resources and Counsel at the National Conference of Bar Examiners.