

LITIGATION UPDATE

by Fred P. Parker III and Jill J. Karofsky

CASES REPORTED:

BAR EXAMINATION

Cheating

In the Matter of Anonymous, an Applicant for Admission to the Bar, 874 N.Y.S.2d 393

In re application of Nwankwo, 121 Ohio St. 3d 72, 902 N.E.2d 16 (Oh. 2009)

CHARACTER AND FITNESS

Failure to disclose; criminal convictions

In re application of Acton, 121 Ohio St. 3d 154, 2009 WL 349793 (Oh. 2009)

Failure to disclose delinquent fines; pending DUI charge

In re application of Wagner, 119 Ohio St. 3d 280, 893 N.E.2d 499 (Oh. 2008)

Lack of candor; failure to disclose

In re Strzempek, 407 Md. 102, 962 A.2d 988, 2008 WL 5396848 (Md. 2008)

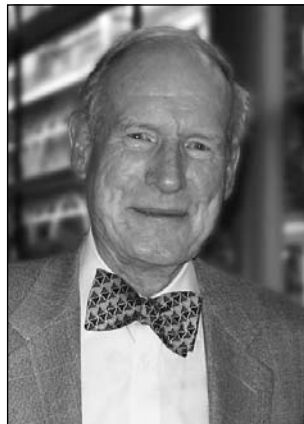
CONDITIONAL ADMISSION

In re Reed, 997 So. 2d 527, 2008 WL 4646629 (La. 2008)

MISCELLANEOUS

ABA-accredited law schools; equal protection; disparate impact; due process; Dormant Commerce Clause; freedom of association

Gordon v. Davenport, 2009 WL 322891 (N.D. Cal.)



ERRATUM: The February 2009 Litigation Update, page 53, incorrectly identified Alameda County Superior Court as the appellate court in *Turner v. Association of American Medical Colleges*. Alameda County Superior Court was the trial court in this case. The California Court of Appeals, First District, Division 5, should have been identified as the appellate court that issued the decision.

BAR EXAMINATION

Cheating

In the Matter of Anonymous, an Applicant for Admission to the Bar, 874 N.Y.S.2d 393

An applicant passed the February 2005 New York Bar Examination and was certified for admission to the New York appellate court. Prior to her admission, the Committee on Character and Fitness conducted an investigation and learned that in July 2005 the applicant sat for the Michigan bar exam and wrote over the time limit. With leave to renew, the Michigan authorities denied the applicant's application for admission because of her misconduct on the exam. In 2008, the applicant renewed her Michigan application, which remains pending.

In this case, the court denied the applicant's application to the New York Bar until final disposition of the Michigan application. After a disposition in Michigan, the applicant may renew her New York request. At that time the court "will consider all of the facts and circumstances presented by the application and determine whether [the] applicant has established the character and general fitness requisite for an attorney and counselor-at-law."

In re application of Nwankwo, 121 Ohio St. 3d 72, 902 N.E.2d 16 (Oh. 2009)

Joy Nwankwo took the July 2007 Ohio Bar Examination as a three-time repeater. A proctor reported to the Director of the Office of Bar Admissions, Lee Ann Ward, that another applicant, Nwankwo's table-mate, had reported to him that Nwankwo had written down answers after time was called. The proctor reminded Nwankwo that time had been called and that she was to stop writing; even though she acknowledged this, she continued to write for a few more moments. Nwankwo was observed during the next session writing after time was called; she was again told to stop writing but she continued to write. Nwankwo pleaded with a Bar Admissions Coordinator not to report her, but she was taken to Ward, who advised her that she could respond to the allegations at that time or she could leave and send in a response. Nwankwo chose to write a statement before leaving. Her first written response did not address the allegations, so she was given the opportunity to take back

her first response and provide a new statement. In the second statement, Nwankwo admitted to writing after time had been called on at least two sets of essay questions. In reviewing the reports of this incident, the Board of Bar Examiners determined that Nwankwo had violated the exam rules and referred the matter to the Board of Commissioners on Character and Fitness.

[S]HE ADMITTED THAT SHE KNEW SHE WAS VIOLATING THE RULES WHEN SHE CONTINUED TO WRITE AFTER SHE WAS ORDERED TO STOP. NWANKWO CLAIMED THAT SHE WAS "SO INVESTED IN PASSING THE BAR EXAMINATION"—HAVING TAKEN A LEAVE FROM HER EMPLOYMENT—THAT SHE WAS "DESPERATE TO WRITE DOWN EVERYTHING SHE COULD REMEMBER." SHE ALSO CLAIMED THAT IN NIGERIA, WHERE SHE WAS ALREADY LICENSED TO PRACTICE LAW, SIMILAR INFRACTIONS ARE NEVER TAKEN SERIOUSLY.

A panel hearing was conducted and Nwankwo testified that she had not heard the instructions at the beginning of the examination because she was in the restroom. However, she admitted that she knew she was violating the rules when she continued to write after she was ordered to stop. Nwankwo claimed that she was "so invested in passing the bar examination"—having taken a leave from her employment—that she was "desperate to write down everything she could remember." She also claimed

that in Nigeria, where she was already licensed to practice law, similar infractions are never taken seriously. Following the hearing, the panel ruled that Nwankwo had violated the testing rules by writing beyond the allotted time on two sets of essay questions. Her character also became an issue because of her cavalier attitude toward the exam rules. The panel determined that Nwankwo did not possess the requisite character and fitness for the bar but recommended that she be allowed to reapply to take the July 2009 examination. The Board of Commissioners adopted the panel's report and its recommendation.

The Ohio Supreme Court stated that Nwankwo had disregarded instructions to stop writing at least twice during the examination and that this raised the question of “her integrity and trustworthiness, her ability to conduct herself within the Rules of Professional Conduct, and her capacity to appreciate the importance of meeting the numerous filing deadlines and time constraints established by . . . Ohio’s courts.” In addition, Nwankwo had exercised poor judgment by asking the proctor not to report her violation and by failing to mention these allegations in her first written statement. The court adopted the board’s recommendation that she be permitted to reapply for the July 2009 examination.

CHARACTER AND FITNESS

Failure to disclose; criminal convictions

In re application of Acton, 121 Ohio St. 3d 154, 2009 WL 349793 (Oh. 2009)

Lawrence Acton entered Case Western Reserve University School of Law in August 2005 and registered to take the Ohio Bar Examination in January 2007. In June 2007 he met with the Joint Admissions Committee of the Cuyahoga County and Cleveland Metropolitan Bar Associations, which provisionally approved his character and fitness. The Board of Commissioners on Character and Fitness advised the applicant in August 2007 that it would inquire further into his lengthy traffic record and other misdemeanor convictions. A panel conducted

a hearing and recommended disapproval but also recommended allowing Acton to reapply for the July 2009 examination. The board adopted the panel’s findings but recommended that Acton be denied the opportunity to take any exam prior to July 2010.

The board was concerned about Acton’s convictions from June 1997 through November 2006. He was found guilty eight times of speeding and on three other occasions waived a hearing and paid the speeding tickets. He was also found guilty of misdemeanor assault on a felonious assault charge and of disorderly conduct on a misdemeanor assault charge. There were also charges of underage alcohol consumption and disturbing the peace. Acton expressed remorse for his past behavior and promised to improve, but even as the board was investigating his traffic and other misdemeanor records he accumulated additional citations. He claimed to have attention deficit disorder (ADD) and

said that he was forgetful and sometimes forgot to pay attention to the speedometer. He claimed that the ADD did not affect his ability to abide by the law but caused him to be slow to learn his lessons.

Acton did receive accommodations from his law school because of ADD, getting extra time in taking his final exams. He had also asked for extra time on the bar exam, but had been granted only the opportunity to complete the test in a semiprivate room.

HE CLAIMED THAT THE ADD DID NOT AFFECT HIS ABILITY TO ABIDE BY THE LAW BUT CAUSED HIM TO BE SLOW TO LEARN HIS LESSONS.

ACTON DID RECEIVE ACCOMMODATIONS FROM HIS LAW SCHOOL BECAUSE OF ADD. . . . HE HAD ALSO ASKED FOR EXTRA TIME ON THE BAR EXAM, BUT HAD BEEN GRANTED ONLY THE OPPORTUNITY TO COMPLETE THE TEST IN A SEMIPRIVATE ROOM. BUT HE ANSWERED “NO” TO THE QUESTION ON HIS REGISTRATION AND BAR EXAM APPLICATIONS CONCERNING ANY CONDITION OR IMPAIRMENT THAT IN ANY WAY AFFECTS, OR IF LEFT UNTREATED MIGHT AFFECT, HIS ABILITY TO PRACTICE LAW IN A COMPETENT AND PROFESSIONAL MANNER.

But he answered “no” to the question on his registration and bar exam applications concerning any condition or impairment that in any way affects, or if left untreated might affect, his ability to practice law in a competent and professional manner.

Acton also failed to fully disclose on his registration application the entry of a default judgment and claimed that his father told him not to pay it because most of the amount was just interest. He never satisfied it. The Board of Commissioners on Character and Fitness recommended that the court not approve his application.

The Ohio Supreme Court, in upholding the Board of Commissioners’ decision, stated that a failure to provide complete and accurate information concerning an applicant’s past could constitute a basis for disapproval. The court also stated that the possibility that a mental disorder may impede an applicant’s ability to practice law in a competent and professional manner can also be factored into the decision. Because of Acton’s “apathy or inability to appreciate and/or neglect of his financial responsibilities and evidence of [his] mental disorder, which untreated could affect [his] ability to practice law, [the court found that] he has not met his burden [of proving] by clear and convincing evidence that he currently possesses the requisite character and fitness to sit for the Ohio Bar.” The court said that Acton may reapply for the July 2010 examination, after first submitting to an assessment by the Ohio Lawyers Assistance Program and completing any recommended treatment program.

Failure to disclose delinquent fines; pending DUI charge

In re application of Wagner, 119 Ohio St. 3d 280, 893 N.E.2d 499 (Oh. 2008)

Margaret Wagner registered in November 2005 to take the July 2007 Ohio Bar Examination. At 4:00 a.m.

on April 30, 2006, in Newport, Kentucky, she was stopped for driving erratically and, after registering .17 grams of alcohol per 210 liters of breath, was arrested and charged with driving under the influence of alcohol (DUI). Wagner appeared before a panel of the Cincinnati Bar Association’s admissions committee on June 13, 2006, for a character interview. At that time, when asked if she needed to make any updates to her application, she failed to disclose the pending DUI charge. Within a day of her interview, a friend advised her that she should have disclosed the DUI charge, and Wagner quickly called to arrange for a second interview. Due to scheduling complications, however, this second interview did not take place until June 21, 2007, by which time Wagner had been convicted of DUI and ordered to pay attendant fines and costs. She had also properly updated her application disclosing her DUI conviction.

After the second interview, the panel recommended Wagner’s approval, although they expressed some reservations about her willingness to accept responsibility for her conviction and initial nondisclosure. Their concern was based on an undated written statement that Wagner had provided to her law school after her conviction and then had included with her supplemental character questionnaire. In this letter, she stated that she had been “pulled over by a bored Newport police officer, whose girlfriend was riding along,” that she had passed the field sobriety tests although the tape had “mysteriously” disappeared, but that she had failed the breath analyzer due to a medical condition (irritable bowel syndrome). She claimed that she had decided to plead guilty because she was not able “to afford a decent lawyer,” and she stated that “if the system wants you, and you have little money, it will get you.”

The board conducted its own investigation and found that Wagner had defaulted on her agreement

to pay \$50 per month towards the DUI fine. A panel appointed by the board held a hearing on January 4, 2008, at which the majority of the panel recommended that the applicant be permitted to take the examination in February 2008.

However, the Board of Commissioners on Character and Fitness adopted the dissenting panel member's view and recommended that the applicant be permitted to reapply for the July 2008 examination.

At the panel hearing, Wagner tried to explain her initial failure to disclose the pending DUI charge, her unduly defensive letter to her law school, and her failure to pay fines as agreed. She claimed that she had decided not to disclose the DUI arrest on the advice of her lawyer, who had supposedly taken into account Wagner's lack of alcohol dependence and lack of any recent criminal conviction. As for her letter, Wagner explained that she was "angry and upset" and that she "just wrote off the cuff and sent it." She finished this part of her explanation by saying, "I'm not used to being in trouble, and I did not handle it well." Finally, when asked about the delinquent payment of her court fines, Wagner replied that she had not been aware of the default until she received notice of her failure to qualify to take the July 2007 bar exam. The board questioned this explanation because Wagner supposedly forgot to pay her fine at the same time she was reporting the DUI conviction to her law school. Moreover, despite the fact that Wagner had tested

MOREOVER, DESPITE THE FACT THAT WAGNER HAD TESTED .17 ON A BREATH ANALYZER AND HAD PLED GUILTY TO THE CHARGED DUI, SHE COMPLAINED ABOUT THE VALIDITY OF HER CONVICTION DURING THE BOARD PROCEEDING BY BLAMING EVERYONE BUT HERSELF. THE BOARD EXPRESSED MISGIVINGS ABOUT WAGNER'S REFUSAL TO COMPLETELY ACKNOWLEDGE HER WRONGDOING AND THE DISRESPECT SHE DIRECTED TOWARD THE CRIMINAL JUSTICE SYSTEM SIMPLY FOR HOLDING HER ACCOUNTABLE FOR IT.

.17 on a breath analyzer and had pled guilty to the charged DUI, she complained about the validity of her conviction during the board proceeding by blaming everyone but herself. The board expressed misgivings about Wagner's refusal to completely acknowledge her wrongdoing and the disrespect she directed toward the criminal justice system simply for holding her accountable for it.

The Ohio Supreme Court reviewed the board's recommendation and Wagner's conduct in regard to her DUI, her failure to timely pay the fine and to report the offense, as well as her ill-advised letter to the law school, and stated that this conduct brought into question her trustworthiness, diligence, and reliability. The court noted that although her DUI conviction did not necessarily reflect an untreated alcohol dependency, her conduct could be construed as reflecting dishonesty or at least a failure to provide complete and accurate information.

The court upheld the board's recommendation to disapprove Wagner's application and said she could reapply to take the February 2009 examination.

Lack of candor; failure to disclose

In re Strzempek, 407 Md. 102, 962 A.2d 988, 2008 WL 5396848 (Md. 2008)

On December 19, 2005, Gregory Strzempek, a member of the New York State Bar for 24 years, filed a bar application with the Maryland Board of Law Examiners. On his Maryland application, Strzempek answered "None" to a question that asked for a

complete record of all criminal proceedings against him, including traffic citations, arrests, and summonses. He also answered "No" to a question which asked if there had been any unfavorable circumstances or events in his life that might have bearing upon his character or fitness to practice law. Strzempek signed his name on the application directly below the statement that informed applicants of their continuing responsibility to disclose relevant information, including "any changes in the information disclosed in or sought by this questionnaire."

Strzempek was scheduled to take the Maryland Bar Examination in February 2006. However, on February 10, 2006, approximately two weeks before the exam was to be administered, Strzempek was arrested in Fairfax County, Virginia. He was charged with driving while intoxicated, refusal to take a breath test, reckless driving, eluding a police officer, and unsafe lane changing. Strzempek did not sit for the February 2006 bar exam.

On April 12, 2006, Strzempek pled guilty to driving while intoxicated, reckless driving, eluding a police officer, and unsafe lane changing. On the driving while intoxicated charge, he was ordered to pay \$641 in fines and serve 360 days in jail with 356 days suspended. In addition, his driving privileges were suspended and he was placed on probation for one year. Strzempek served his four-day jail sentence from April 14 to 18, 2006.

Nine days after his release from jail, on April 27, 2006, Strzempek attended his Character Committee interview. During the interview, Strzempek did

not disclose his arrest, conviction, jail sentence, suspended driver's license, or probation. He also did not supplement his bar application with the events of February 10, 2006.

Strzempek sat for the Maryland Bar Examination in July 2006. On November 5, 2006, he learned that he had passed the examination. On November 8, 2006, Strzempek sent the Maryland Board his affirmation form. (An affirmation form is sent to successful bar applicants with their bar examination results. It requires the applicant to affirm that the information contained in the original application is still current.) Enclosed with the form, Strzempek included his conviction record and a letter that indicated he had been convicted of five offenses and paid fines of \$87 and \$50 for the lesser traffic offenses. Strzempek omitted the \$641 fine, the four-day jail sentence, and the suspended sentence imposed for driving while intoxicated.

After receiving Strzempek's affirmation form, the board filed an exception to his admission and returned the file to the Character Committee. On December 5, 2007, the Character Committee conducted a hearing in which Strzempek admitted not disclosing the Virginia incident prior to filing his affirmation form.

Strzempek explained that he had been uncertain he would pass the bar exam and his plan was to wait and see if he passed the exam, "at which point I would promptly inform the Law Examiners and the Character Committee of the incident, or I would not pass the exam and decide to retake it, at which point

STRZEMPEK EXPLAINED THAT HE HAD BEEN UNCERTAIN HE WOULD PASS THE BAR EXAM AND HIS PLAN WAS TO WAIT AND SEE IF HE PASSED THE EXAM. . . . STRZEMPEK CONTINUED BY TELLING THE COMMITTEE THAT AS LONG AS THERE WAS A PROBABILITY THAT HE COULD WITHDRAW HIS APPLICATION, HE DID NOT SEE THE NEED TO EXPOSE HIMSELF TO THE TYPE OF EMBARRASSMENT THAT DISCLOSING THE VIRGINIA INCIDENT MIGHT CREATE.

I would also disclose the incident, or I would decide that, you know, whether due to time constraints, you know, or that I wouldn't—or I didn't think I would pass, ultimately pass the exam, I'd decide to withdraw my application." Strzempek continued by telling the committee that as long as there was a probability that he could withdraw his application, he did not see the need to expose himself to the type of embarrassment that disclosing the Virginia incident might create.

After the hearing, the Character Committee recommended that Strzempek be denied admission to the Maryland Bar. The Character Committee was concerned about Strzempek's lack of candor, finding that "[t]he applicant, while admitting that he made a mistake, did not show remorse for his actions and stated that he saw no reason for disclosure if he had failed the exam even though he previously admitted that he violated the sworn statement on his application requiring full and immediate disclosure" of any changes to the information in his application.

The board reviewed the Character Committee's report and held a hearing on May 2, 2008. At the hearing the board made the following findings of fact:

1. Strzempek was arrested and charged with five offenses relating to drinking and driving in Virginia. He was convicted of driving while intoxicated, paid fines and costs, was placed on probation for a year, had a restricted license, and was ordered into treatment.
2. Strzempek disclosed the information regarding the driving incident in his affirmation and convinced the board that he had intended to voluntarily admit to the incident and had no intention of being admitted to the Maryland Bar under "false pretenses."

3. Although Strzempek did not timely amend his bar application, it was never his intent to conceal his record and he did disclose the Virginia incident when he filed his affirmation.
4. Strzempek disclosed his record when applying for employment.
5. The arrest, convictions, and late disclosure were aberrations of Strzempek's behavior.

The board decided that Strzempek was candid and contrite in his testimony and submissions to the board. The board concluded that Strzempek possessed the good moral character and fitness necessary for membership in the Bar of Maryland and recommended his admission.

A show cause hearing was held before the Maryland Court of Appeals. The hearing required Strzempek to show cause why the favorable decision of the board should stand and the unfavorable decision of the committee should be rejected. The issue for the court was "whether Strzempek has met his burden of proving that he possesses the *present* good moral character to practice law in the state of Maryland." (emphasis in original)

The court first addressed Strzempek's failure to comply with question 19 on the Maryland Bar Application, which requires all applicants "to ensure that [their] responses are accurate and current at all times until [they are] formally admitted." Strzempek admitted his failure to comply but argued that his lack of disclosure was mitigated because eventually he did disclose the Virginia incident and he did not intend to permanently conceal it.

The court disagreed with Strzempek's argument. "[W]e emphasize that disclosure on the Bar application and immediate and full supplementation after an incident warranting exposition is mandatory,

not voluntary. It is not the choice of a candidate for admission whether to disclose and under what conditions.” The court did not view as a mitigating factor Strzempek’s position that his intent was not to permanently conceal his arrest and convictions. Rather, the court found that Strzempek’s “choice not to disclose in the face of these known obligations . . . impinges on his character and fitness to practice law, irrespective of any purported ultimate intent.”

The court was also displeased by Strzempek’s decision to conceal the Virginia incident from the Character Committee representative nine days after being released from jail. The court found that “[h]is lack of candor clearly frustrated the intent as well as the purpose of the Character interview, upon which we rely for assessment of good character.”

The court denied Strzempek’s admission to the Maryland Bar because he failed to meet his burden of proving his present good moral character. Two members of the court of appeals dissented in this opinion, stating that the court’s refusal to accept the board’s recommendation was not justified by any finding of fact and that the court had “inappropriately and erroneously . . . [made] its own credibility determination.”

CONDITIONAL ADMISSION

In re Reed, 997 So. 2d 527, 2008 WL 4646629 (La. 2008)

Morris Reed applied to take the Louisiana Bar Examination, and the Committee on Bar Admissions opposed his application because of character and fitness concerns relating to his arrest record and one DWI conviction. The Louisiana Supreme Court allowed Reed to take the examination, which he passed. A character and fitness hearing was then held and the commissioner received documentary

evidence and heard testimony given by Reed and his witnesses. At the conclusion of the hearing the Commissioner recommended to the court that Reed be conditionally admitted to the Louisiana Bar. The Committee on Bar Admissions objected and oral argument was held. The Louisiana Supreme Court concluded that Reed should be conditionally admitted to the practice of law in Louisiana and required him to participate in a counseling program and ensure that monthly reports of his progress and his participation were sent to the Louisiana Office of Disciplinary Counsel.

MISCELLANEOUS

ABA-accredited law schools; equal protection; disparate impact; due process; Dormant Commerce Clause; freedom of association

Gordon v. Davenport, 2009 WL 322891 (N.D. Cal.)

Roger Gordon, a third-year law student at Georgetown University Law Center, filed a lawsuit against the California State Bar seeking injunctive relief to establish his right to sit for the California Bar Examination even though he had not completed his upper division study or graduated from Georgetown. Gordon stated that the purpose of his lawsuit was to “lower the financial and opportunity costs of obtaining a legal education” and to reduce the barriers to entry into the legal profession so attorneys can represent a wider range of clients.

California requires the completion of one of two tracks for an applicant to qualify to sit for the bar exam. The “traditional” track requires an applicant to graduate from a school accredited either by the California Committee of Bar Examiners or by the American Bar Association. The “alternative” track requires an applicant to study law diligently and in good faith for at least four years either (1) at a

law school that is authorized or approved to confer professional degrees and that requires 270 hours of attendance each year, (2) in a California law office under the supervision of a licensed attorney who has practiced at least five years, (3) under the personal supervision of a California judge, or (4) with a correspondence law school that is authorized to confer professional degrees and that requires 864 hours of preparation per year.

Gordon is African American, suffers from Attention Deficit Disorder, and is low income. After completing 78 of the 84 credits required to receive his Georgetown law degree, he decided he wanted to complete his preparation for the bar exam using alternative study. Gordon alleges that California's prerequisites to sit for the bar exam "restrict fundamental rights, limit access to the courts, and disparately impact protected classes."

In this case Gordon filed an amended complaint alleging that California's rules violated his rights to equal protection and due process because the rules requiring students at ABA-accredited schools to graduate and requiring alternative preparers to complete four years of study prior to taking the bar exam have a disproportionate impact on low-income African Americans seeking legal representation. He also complained that his First Amendment right to be free of forced association was violated because the California rules penalize him for not choosing an ABA-accredited school. Lastly, he claimed that California's rules violated the Dormant Commerce Clause by creating an impermissible regulatory

framework. The State Bar of California moved for dismissal of all of Gordon's claims.

The district court judge first addressed Gordon's due process claims. Gordon claimed that his due process rights were violated because the California rules would not allow him to sit for the bar exam unless he fulfilled one of the stated prerequisites. The court

ruled that these arguments failed because Gordon did not allege which specific property rights or liberty interests the California Bar deprived him of without sufficient process, he did not cite which specific rules or actions caused a deprivation, and he did not demonstrate that he had exhausted all administrative remedies afforded by the State Bar before filing suit in federal court.

Next the court examined Gordon's two equal protection claims. The first was that the rules in California violated his rights and those of other disabled individuals because there is no reason to require either the completion of law school or the alternative four-year study period. Gordon's second argument was that the California rules make it more difficult for him and other African Americans to secure legal representation.

The court rejected Gordon's equal protection claims because Gordon failed to allege specific facts to support his conclusions. Moreover, the court found that even if Gordon had alleged specific facts to support his claims, the claims would fail as a matter of law because he did not allege facts showing that the defendants either acted with


discriminatory intent in enacting the rules or applied the rules to him in a discriminatory manner. The court also dismissed Gordon's argument that the fourth year of study required under the alternative track violated his rights, because Gordon failed to make factual allegations showing how he had been treated differently.

Gordon also complained that the defendants violated the Dormant Commerce Clause because relying on the ABA accreditation standards in setting standards for admission to the bar "creates an interlocking system of regulation that impermissibly burdens interstate commerce." Gordon concluded, without alleging specific facts, that "ABA accreditation serves no purpose other than to allow law school graduates to be imported from, and be exported to, other states."

The court reviewed the Dormant Commerce Clause, which prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." The judge dismissed Gordon's Dormant Commerce Clause claims

because he failed to show that the rules in California impose such a burden and because recent court decisions have "upheld state bar rules and restrictions in the face of Dormant Commerce Clause challenges."

Gordon's final claim was that the defendants violated his First Amendment right to be free of forced association and compelled speech, because the California rules penalized him for not associating with an ABA-accredited school. The court dismissed Gordon's free association argument, finding that "while attending an ABA-accredited school may be a favorable path for qualifying for the bar exam, it is not the only path." The court ruled that the defendant's rules did not force Gordon to associate with an ABA-accredited school, and they did not violate his right of non-association.

The court dismissed the case with prejudice. 

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 for the National Conference of Bar Examiners.