

LITIGATION UPDATE

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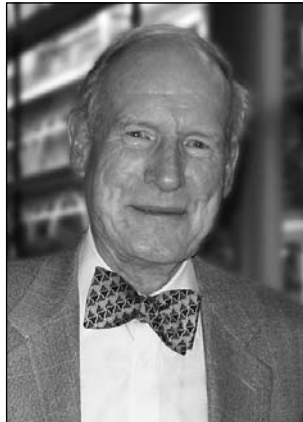
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CHARACTER AND FITNESS

Falsification of resume; altered law school transcripts; bar discipline

In re Hawn, 917 A.2d 693 (D.C. 2007)

Gregory Hawn had been admitted to the Bar of the District of Columbia Court of Appeals. In an attempt to obtain legal employment in California, he falsified his resume and altered his law school transcripts. He self-reported his actions to the court's Bar Counsel but not until his misdeeds had been questioned by a prospective employer and his law school. The Board on Professional Responsibility, following a review of a hearing committee's report, concluded that Hawn had violated Rule 8.4(c) of the District of Columbia Rules of Professional Conduct and, as discipline for this violation, the board recommended

that he be suspended from the practice of law for 30 days.

The DC Court of Appeals noted on review that there was no exception taken to the board's report and recommendation and that Hawn had not filed any opposition. Accordingly, the court ordered that Gregory Hawn be suspended from the practice of law in the District of Columbia for a period of 30 days.

Financial irresponsibility

In the Matter of Anonymous, an Applicant for Admission to the Bar, 61 A.D.3d 1214, 875 N.Y.S.2d 925 (NY 2009)

The applicant, age 47, borrowed heavily to attend college, graduate school, and law school. He took out 32 loans to attend these schools. After graduating from law school, he took the New York Law Examination four times, passing it in February 2008. The State Board of Bar Examiners certified him for admission to the Court of Appeals. The New York Committee on Character and Fitness completed its investigation of his application for admission and conducted an interview with the applicant. The committee recommended him to the court for approval.

The applicant disclosed numerous student loans with balances totaling about \$430,000. The loans were delinquent but he professed good-faith intentions to pay them. He attributed his nonpayment to the downturn in the economy and bad-faith negotiations on the part of some of the loan servicers. The court's review of his application indicated that the disbursement dates of the loans covered a 20-year period from as early as 1985. The applicant had not made any substantial payments on the loans and had not been flexible in his discussions with the loan companies. "Under all the circumstances herein, [the court concluded] that [the] applicant [had] not presently established the character and general fitness requisite for an attorney and counselor-at-law."

Fraud; bar discipline

In re Voykhansky, No. BD-2008-097 (MA, Nov. 10, 2008)

Grigory I. Voykhansky grew up in the former Soviet Union and immigrated to the United States in 1988. He worked as an insurance broker in Kansas and Massachusetts. In 1999 he applied for admission to

the Massachusetts School of Law and paid a friend and fellow Russian émigré to obtain a fraudulent diploma purporting to award him a bachelor's degree from Gorky State. He was admitted to law school and graduated in 2002. He then filed an application for admission to the Massachusetts Bar and intentionally misrepresented that he had obtained a bachelor's degree from Gorky State. In fact, the only post-primary education he had completed was at the Leningrad Technical School of Refrigeration. He had also taken some college courses at the University of Kansas, but had not received an undergraduate degree. He was admitted to the Massachusetts Bar in 2002 and began practicing law.

Around 2006, Voykhansky terminated his relationship with two business associates who were involved in fraudulent medical claims. The associates assaulted him, and Voykhansky reported them to the U.S. Attorney. One of the associates was the émigré who had sold him the fraudulent diploma used to obtain his law license. At some risk to himself and his legal career, Voykhansky cooperated with the government and testified against his former associates. In the course of doing so, he revealed the fraudulent diploma to the federal prosecutor and also to the court during his examination. The judge told him that he would report him to the Board of Bar Overseers if he did not do so himself. Voykhansky self-reported.

The hearing committee ruled that Voykhansky had violated the Massachusetts Rules of Professional Conduct by making misrepresentations on his bar application. However, the committee also found a number of mitigating factors:

- Voykhansky had completed his education despite an eye disease and a later injury that left him blind in one eye.

- He had not been able to obtain documentation of all of his education before emigrating from Russia because the state would not provide émigrés with diplomas until they had reimbursed the state for the cost of their education, and also because the state discriminated against his ethnic group.
- He had not been able to obtain transcripts for courses he took at the University of Kansas because he had cosigned an education loan that his ex-wife had not paid.
- He participated in the formation of Women of the World, an organization that helps women committed to democracy obtain political office in Russia.
- He volunteered in community work and homeless shelters and provided pro bono legal services to his church and his pastor.
- He performed volunteer work for The Bridge House, which assists recently released prison inmates.

The committee found that the totality of these circumstances constituted something more than typical mitigation and that Voykhansky had demonstrated “considerable evidence of his current good character.”

The Board of Bar Overseers filed a report with the Supreme Judicial Court recommending that Voykhansky be suspended from the practice of law for one year and one day, and that his reinstatement be conditioned on his obtaining a report from the Board of Bar Examiners that he possesses the character, fitness, and qualifications to practice law in the commonwealth. The Supreme Judicial Court agreed with the recommendation and entered an order to that effect.

Fraud, deceit, and misrepresentations to the court; bar discipline

In re Baffa, No. SB-06-0159-M (Ariz. 2007)

Suzanne Baffa was licensed to practice law in Arizona in May 2004. She had received her law degree from Whittier Law School in California in May 2003. In the spring of 2003 the Honorable Patrick J. Walsh, Magistrate Judge of the U.S. District Court for the Central District of California, engaged her to work in his chambers as an extern. Her scheduled term was January through May 2003. She worked in Judge Walsh’s chambers in January, February, and March but did not work in April and May and did not call Judge Walsh to notify him that she would not be working. Instead, she left messages at odd hours when no one was in the office. The judge called the law school to complain about Baffa’s failure to show up for work. After Judge Walsh complained to the law school, Baffa contacted his office and in a conversation with the judge’s law clerk stated that she had failed to appear in chambers because she was suffering from cancer. This information was conveyed to Judge Walsh. At that time Baffa did not have cancer and her statements to the judge’s law clerk were false and she knew they were false. Baffa admitted lying to Judge Walsh and stated that she did so because she was under a lot of stress due to law-school-related commitments.

In September 2003 Baffa sent a cover letter to the Honorable Paul A. Magnuson, U.S. District Court Judge for the District of Minnesota, explaining that she had recently graduated from law school and was interested in being a volunteer intern in his chambers. She further explained that she had recently moved to Minnesota and was anxious to have some local experience. In September 2003 she began the volunteer internship, which was scheduled until

December 2003. In late October or early November 2003 Baffa stopped going to Judge Magnuson's chambers and never called or notified him about her absence. In November 2003 Judge Magnuson's judicial assistant received a phone call from a Robin LeDonne, who advised the judicial assistant that she had recently received a message from Suzanne Baffa and that Baffa had requested that she call Judge Magnuson and inform him of her family situation. Ms. LeDonne explained that a member of Baffa's family had passed away under unfortunate circumstances and that Baffa was returning to Arizona to be with her family.

In the spring of 2004 Baffa sent a gift basket with a thank-you note to Judge Magnuson's chambers expressing her appreciation for the opportunity to work there and thanking Judge Magnuson for his understanding during her family loss. This assertion to Judge Magnuson through Ms. LeDonne that a family member had passed away in October or November 2003 was false and Baffa's assertion that she had returned to Arizona due to the family member's death was false. Baffa admitted to misleading the judge due to the stress of having to retake the bar exam and having broken up with her fiancé.

In June 2004 Baffa sent Judge Walsh a note stating that after she graduated she had taken and passed the Arizona bar exam and had been in remission for over a year. Her statement about remission was false, as she had not had cancer. On July 1, 2004, and again on August 2, 2004, the State Bar of Arizona received a letter from Judge Walsh concerning Baffa's conduct. The Bar forwarded these two letters to Baffa and requested that she respond. At Baffa's request the board granted her several extensions of time to respond. Baffa acknowledged that she had engaged in misconduct in the matter and that probable cause existed for the purposes of a proceeding. She

acknowledged having engaged in this misconduct but denied that she had violated the Arizona Rules of Professional Conduct. She stated that the misconduct occurred while she was a third-year law student, that she had made material omissions to Judge Walsh about her intentions and about the execution of her duties, and that she had not sought permission from the judge to complete the assigned work outside of chambers.

Baffa was found to have knowingly engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation when she represented to Judge Walsh's law clerk that she had failed to appear in his chambers because she suffered from a serious health condition, when she sent a note to Judge Walsh stating that she had been in remission for a year, when she requested that Ms. LeDonne contact Judge Magnuson and inform him that Baffa had returned to Arizona due to the death of a family member, and when she sent Judge Magnuson a thank-you note.

The State Bar and Baffa agreed that she would receive a nine-month suspension for violating Rule 42 of the Arizona Supreme Court, ER 8.4(c). She would also contact the State Bar's Member Assistance Program to begin an assessment within 30 days of the agreement. The hearing officer, with some reservations, recommended that the commission approve the agreement. The hearing officer was concerned about the pattern of Baffa's misconduct and about the fact that there was apparently no explanation for the misconduct, nor any evidence that Baffa was attempting to address her problems; Baffa had not even submitted so much as a confirmation letter from a counselor or a doctor to show that she had entered counseling. While Baffa claimed to be remorseful, it was not clear that she was truly remorseful for having knowingly lied to two judges. However, the hearing officer recommended approval of the agreement.

The matter then was referred to the Disciplinary Commission of the Arizona Supreme Court.

The Commission on its own motion continued the matter and set it for oral argument. At the time of oral argument, Baffa stated that she wished to withdraw from the agreement based on an ongoing investigation by Whittier Law School as to the validity of her law degree. The Disciplinary Commission recommended rejecting the agreed-upon suspension and referring the matter back to the hearing officer for further proceedings. The Commission took into account Baffa's request to withdraw and her demeanor in oral argument as well as the Commission's continuing concern that a nine-month suspension was insufficient for this type of misconduct. The Commission recommended that the State Bar seek an Interim Suspension.

The State Bar then filed a petition to revoke Baffa's license to practice law, and by order of the Chief Justice of the Arizona Supreme Court dated February 12, 2007, it was ordered that Suzanne Baffa's license to practice law in Arizona be retroactively revoked to the date of her bar admission.

Lack of candor; failure to disclose; race-based harassment

In re Gavin, 8 So. 3d 556, 2009 WL 1352620 (La. 2009)

John Murray Gavin is an attorney licensed to practice law in Minnesota. He applied to sit for the Louisiana Bar Examination and was told by the Committee on Bar Admissions that he could not take the exam because of a prior incident in which Gavin used racial epithets toward two employees of DePaul University College of Law and later denied making such comments.

The Louisiana Supreme Court decided to allow Gavin to sit for the exam. The court ruled that if

Gavin passed the exam, he should apply to the court for the appointment of a commissioner to take character and fitness evidence.

Gavin sat for and passed the Louisiana bar exam. He then petitioned the Louisiana Supreme Court to remand his case to the Committee on Bar Admissions Panel on Character and Fitness to conduct an investigation and appoint a commissioner to take evidence concerning Gavin's character and fitness. The court granted Gavin's petition.

A commissioner conducted a hearing that centered on two issues. The first was the 2006 incident at DePaul University College of Law in which Gavin engaged in race-based harassment of two employees. When DePaul initiated disciplinary proceedings against Gavin for his actions, Gavin falsely denied making the remarks. The second incident occurred in 1995 when Gavin applied to law school and failed to disclose several prior arrests and convictions. Additionally, within days of submitting his law school application, Gavin was arrested and charged with driving while intoxicated. Although he had signed an acknowledgment of his obligation to update his application under such circumstances, he did not do so at that time. When he finally updated his application in 1996, at the end of his first year of law school, the information he provided was untruthful and incomplete.

After the hearing, the commissioner recommended that Gavin be denied admission to the Louisiana Bar. Gavin did not object to the recommendation.

The Louisiana Supreme Court adopted the commissioner's recommendation. The court ruled that there was no doubt that Gavin's lack of candor reflected adversely on his character and fitness. The court was particularly troubled by Gavin's conduct

at DePaul, finding that “[n]ot only did petitioner utter derogatory and offensive comments which have no place in the practice of law, he continued in his pattern of lack of candor by denying throughout the DePaul proceedings that he made the comments in the first instance.” The court concluded that Gavin had failed to meet his burden of proving his good moral character.

Gavin was denied admission to the Louisiana Bar.

Unauthorized practice of law; fee sharing with an attorney

In re Jordan, 2009 WL 1385932 (La. 2009)

In 1999, the Louisiana Supreme Court denied Marcia Denise Jordan’s application for admission to the Louisiana Bar because she “had not satisfied her burden of proving her good moral character.” In 2000, Jordan filed a second application for admission. That application was also denied, because Jordan failed to show how her character and fitness to practice law had changed after the denial of her first application.

In 2004, Jordan filed a third application for admission. After the Louisiana Supreme Court found that Jordan had demonstrated a change in circumstances, the court appointed a commissioner to take evidence and report whether Jordan possessed the requisite character and fitness to practice law in the State of Louisiana.

The appointed commissioner conducted a hearing and afterwards recommended that Jordan be admitted to the Louisiana Bar. The Louisiana Committee on Bar Admissions objected to the commissioner’s recommendation.

In November 2004, the Louisiana Supreme Court heard oral argument on this case. During the oral argument, new issues were raised concerning whether Jordan had engaged in the unauthorized practice of law and whether she had improperly shared attorney’s fees that were paid to her

employer, Attorney Richard Garrett. These new issues had not been considered by the commissioner, so the Supreme Court remanded the case for a supplemental hearing.

In November 2005, the commissioner conducted the supplemental hearing. When the hearing concluded, the commissioner recommended that Jordan be denied admission to the bar because she had engaged in the unauthorized practice of law and participated in a fee-sharing agreement, violating the Rules of Professional Conduct.

The Supreme Court reviewed the commissioner’s recommendation and found clear and convincing evidence that Jordan had negotiated personal injury settlements on behalf of Attorney Garrett’s clients and had represented Attorney Garrett’s clients during recorded statements taken by insurance companies. The court concluded that Jordan’s actions constituted the unauthorized practice of law. The court also decided that the fee-sharing arrangement between Attorney Garrett and Jordan was in violation of the Rules of Professional Conduct, which prohibit the sharing of legal fees between a lawyer and a nonlawyer.

The court held that Jordan failed to meet her burden of showing she has the “good moral character” required to become a member of the Louisiana Bar. Accordingly, the court denied Jordan’s application for admission. In a separate proceeding, Attorney Garrett was disbarred.

CONDITIONAL ADMISSION/ PROBATIONARY LICENSE

Financial irresponsibility


Santulli v. Texas Board of Law Examiners, 2009 WL 961568 (Tex. App.-Austin)

In June 2001 the Texas Board of Law Examiners approved an agreed order recommending Frank P.

Santulli III for a two-year probationary license. Santulli was carrying a substantial amount of student loan and personal debt and had entered into a debt management plan with a credit counseling service and had started making payments under that plan. In the agreed order the board required that Santulli make payments under the plan and in accordance with a student loan debt management program and provide proof of those payments periodically. By May 2002 Santulli had fallen behind on both his student loans and credit counseling plan. In December 2002 the board conducted a hearing to determine whether Santulli's license should be revoked due to his failure to meet the conditions in the agreed order. Santulli testified that due to family illnesses and changes in his work status he had fallen behind and had not made payments since December 2001. The board was concerned that Santulli could find himself in a position where he was "in so much debt and under so much pressure that there [would be] opportunities and temptations [to] either . . . short-shrift [his] clients or . . . convert money from [his] clients to take care of [his personal] debts." In an order dated December 2002 Santulli was granted a six-month extension with an amended set of conditions.

In December 2003 the board conducted another hearing relating to Santulli's probationary license. Santulli testified that he had not made any more payments on his debt or filed a petition in bankruptcy. An order was then entered recommending that his probationary license be revoked. Santulli then sought judicial review. The trial court considered the administrative record and affirmed the board's decision, finding that the order was supported by substantial evidence.

On appeal to the Court of Appeals of Texas, Austin Division, Santulli asserted that the trial court had erred in determining that the board's order was supported by substantial evidence, that the conditions of his probationary license were arbitrary and capricious, and that the board had erred in determining that Santulli lacked good moral character. The appellate court stated that Santulli had not, until this appeal, complained of or sought judicial review of the 2002 order that imposed the condition of his probationary license requiring him to make suitable arrangements to pay or discharge all of his past-due debts. Further, he had not asserted before the trial court that the condition was ambiguous. The board had told Santulli that it wanted a comprehensive plan regarding the payment or discharge of his debts and that having the intention to pay or manage his debts would not suffice. Santulli had not made any progress in regard to his debts other than to develop a more concrete intention to file for bankruptcy within a month. The court held that substantial evidence supported the board's findings that Santulli had violated the conditions of his probationary license.

The appellate court agreed with the trial court that "substantial evidence supported the Board's determination that there is a clear and rational connection between Santulli's lack of trustworthiness or reliability in carrying out responsibilities and the likelihood that he will harm a client, obstruct the administration of justice, or violate the disciplinary rules." The order of the trial court affirming the board's decision was affirmed. 

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