

LITIGATION UPDATE

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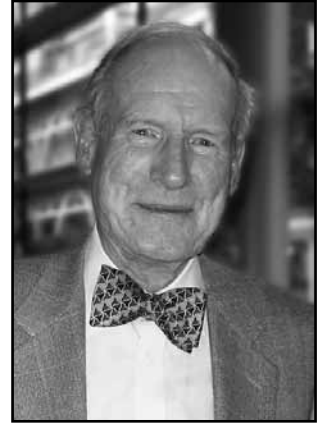
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BAR EXAMINATION

Admission of foreign applicant; equivalency of LL.M. degree

In re Sara Paniagua de Aponte, 364 S.W.3d 176 (Ky. 2012)

On April 26, 2012, the Supreme Court of Kentucky ruled that an applicant who received her primary legal education in the Dominican Republic was not entitled to sit for the Kentucky Bar Examination. Specifically, the court held that an LL.M. in International Legal Studies from an ABA-accredited law school was not the equivalent of a J.D. degree from an accredited American law school.

The applicant, Sara Paniagua de Aponte, studied law at the Universidad Iberoamericana Escuela de

Derecho in Santo Domingo, Dominican Republic. After graduation, she was licensed to practice law in the Dominican Republic. She later moved to the United States and earned her LL.M. from Georgetown University Law Center. In July 2010, Paniagua de Aponte took the New York Bar Examination, which she passed on her first attempt. She was subsequently sworn in to the New York Bar.

Paniagua de Aponte relocated to Kentucky in 2011 and sought the right to take the Kentucky

Bar Examination. However, the Board of Bar Examiners denied her request, stating that an LL.M. in International Legal Studies is not the equivalent of a J.D. from an ABA-accredited law school. Under SCR 2.014(1), a J.D. or equivalent from an accredited American law school is a prerequisite to admission to the bar in Kentucky.

While agreeing with the board, the Court was careful to distinguish between the LL.M. degree earned by Paniagua de Aponte and other LL.M. programs. The Court did not rule out the possibility that an LL.M. degree could be considered an “equivalent professional degree” under the statute. The Court noted that some LL.M. programs are “designed specifically to offer foreign law graduates sufficient exposure to American law and to allow them to take some states’ bar examinations.” The Georgetown General Studies LL.M. was cited as one example.

The issue with Paniagua de Aponte’s LL.M. was that it was narrowly focused on International Legal Studies. While a J.D. degree from an American institution provides exposure to the “central pillars of American law,” the Court found that an LL.M. in a particular topic is too narrowly focused and is “no substitute.” The Court noted that “[Paniagua de Aponte’s] course work, which focused on international and business law subjects, was dou-

bly narrow, and thus was unlikely to give her a sense of American law as a whole.”

However, a graduate of a foreign law school who does not meet the general education requirement of a J.D. degree may still sit for the Kentucky Bar Examination if the Court grants a waiver under SCR 2.014(3). SCR 2.014 provides an exception in instances where the foreign applicant’s education is the “substantial equivalent” of an approved law school education in Kentucky, and where the applicant has been engaged in the practice of law for at least three of the past five years. In this case, Paniagua de Aponte had less than one year of legal practice, so the Court found that any evaluation of the substantial equivalence of her education for purposes of the waiver requirement would be premature, especially considering the expense of such an evaluation.

The Court acknowledged that Paniagua de Aponte’s achievements were laudable, especially her having passed the “notoriously difficult” New York Bar Examination on the first attempt, and said that strict application of the admission rules sometimes results in “imperfect outcomes.” However, the Court stated that “[e]very time we depart from the rule . . . by a waiver, . . . we undermine overall efficiency and the confidence engendered by the rule” and that in this case, “a showing of something more than what [Paniagua de Aponte] has shown would be necessary.”

CHARACTER AND FITNESS

Lack of candor on the bar application and at a hearing

In re Application of Martin, Slip Opinion No. 2012-OH-5427

Ebonie Martin graduated from law school in May 2011 and applied as a candidate for admission to the Ohio Bar in September 2010. She subsequently applied to take the July 2011 bar exam. She was interviewed by two panels of the Columbus Bar Association. The panels recommended that she not be approved for character and fitness reasons.

A panel of the Board of Commissioners on Character and Fitness conducted a formal hearing and then issued a report identifying three areas of concern that caused the panel to recommend that Martin’s application not be approved. The first concern was about Martin’s truthfulness in her explanation of why she had failed her final Real Property

exam during her first semester of law school. She stated that she had failed to place her number on the exam, because she had written it on her hand and her sweaty hand made the number illegible. The investigation revealed that while she had lost some points for this failure, she had also done poorly on the exam.

The second area of concern was Martin's handling of her finances. She began law school with \$15,000 in student loan debt, but although she received scholarships to pay all but \$18,000 a year for tuition during law school, she graduated with \$150,000 in student loan debt. The panel and the board found that because she had obtained financial counseling, planned a budget, and obtained a job as a paralegal, she was beginning to address that issue.

The panel's third and most serious concern was Martin's lack of truthfulness in her explanation of a 2008 traffic stop that resulted in her being charged with providing false information to a police officer to avoid a citation, driving with an expired driver's license, and failing to secure a child in a car seat. Martin admitted at the hearing that when she was pulled over (because the officer believed that her car windows were too darkly tinted), she did not have her driver's license with her, and that it had expired more than six months before the traffic stop. Martin testified that when the officer asked for her Social Security number, she gave him her mother's Social Security number instead, but she claimed that she had done so by mistake, due to the stress of the situation and the fact that she often gave her mother's Social Security number when dealing with her mother's health issues. However, the officer testified that in addition to giving her mother's Social Security number, Martin also gave her mother's name and date of birth.

On her bar application, Martin reported that the charge of providing false information was due to her having told the police officer that the child

in the vehicle at the time of the traffic stop was her daughter when in fact it was her goddaughter. At the hearing, Martin maintained that this "confusion" of the child's identity was the basis of the false information charge. Although the false information and child-restraint charges were dropped and Martin pleaded guilty to driving with an expired license, the panel believed the officer's testimony and believed that Martin had used her mother's name, birth date, and Social Security number in an attempt to avoid responsibility for driving with an expired license.

The panel and the board were also troubled by the fact that the car Martin was driving at the time of the stop was not registered in her name, although she claimed that she had purchased it from a friend. The panel asked Martin to submit additional documentation regarding this transaction, and the additional documentation she furnished revealed that "the transaction was completely different" from what she had testified to at the hearing. Based on Martin's apparently false testimony, the panel and the board recommended that her application not be approved, but that she be allowed to reapply for the July 2014 exam.

The Ohio Supreme Court said that an applicant's record must justify "the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them." Based on Martin's record, the Court agreed that she had failed to prove that she currently possesses the character, fitness, and moral qualifications for admission to the practice of law. The Court adopted the board's findings and disapproved Martin's application to take the bar examination, but allowed her to apply to take the July 2014 exam by filing a new registration and application and by undergoing a full character and fitness investigation by the National Conference of Bar Examiners and a review and interview by the appropriate local bar association admissions committee.

Lack of honesty; substance abuse; neglect of financial responsibilities

In re Gueli, 132 Oh. St. 3d 39, 968 N.E.2d 479 (2012)

Jeffrey Gueli was admitted to the Florida Bar in 2005 and was hired by the Florida Office of the State Attorney in September 2005. He resigned from that position in March 2006 after he was reprimanded for filing criminal charges without discussing them with his supervisor and then taking the matter to the media when his supervisors did not agree with his actions. Although he initially testified that he was unaware of any policy that would prohibit him from talking to the media, he later admitted that he had been told of such a policy at his orientation.

After leaving the State Attorney's Office, Gueli engaged in the private practice of law in Florida and apparently became increasingly delusional, claiming that authorities had interfered with his mail and that they had spiked his drink with a deadly substance. He filed suit in federal court against the president of the United States, the governor of Florida, and the Florida state attorney, claiming that they had violated the Racketeer Influenced and Corrupt Organizations Act and had denied his First Amendment rights by interfering with his mail. The court dismissed this action. Later, Gueli testified falsely that he had voluntarily dismissed the action.

Following the dismissal of his federal action, Gueli moved to his home state of Ohio and obtained temporary employment. In 2006 and 2007 the Florida Bar filed two complaints against him based on his federal lawsuit and on an arrest for DUI that Gueli claimed had been orchestrated by the authorities because of the federal lawsuit. He responded in letters threatening to sue the bar; he then failed to appear at the hearings, claiming that he saw no reason to attend because he had been acquitted of the criminal charge and that the hearings were over 250

miles from his parents' house and he had no way to get there.

In 2008, a Florida grievance committee recommended that Gueli participate in a diversion program with Florida Lawyers Assistance (FLA, Inc.), but Gueli, having returned to Ohio, failed to submit the required evaluation. He did, however, enter into a contract with the Ohio Lawyers Assistance Program (OLAP), which the Florida grievance committee eventually determined was an adequate substitute for the required FLA, Inc., program. Gueli also applied to register as a candidate for admission to the practice of law in Ohio. In 2009, following a psychiatric evaluation, Gueli was diagnosed with major depression with psychotic features. His OLAP mental-health contract required him to take prescribed medication and to abstain from alcohol and other mood-altering drugs. Gueli failed to take his medication as prescribed and continued to drink excessively. He participated in an intensive outpatient treatment program for alcohol dependency, but without success.

Gueli entered into a second OLAP contract in 2010 to address his alcohol dependency. The contract required him to refrain from using alcohol, to submit to random alcohol screening, to participate in Alcoholics Anonymous (AA), and to obtain an AA sponsor within two weeks of signing the contract. Gueli failed to comply with many of these provisions. He did not attend AA meetings regularly, he waited six months to obtain an AA sponsor, he failed two of his six random alcohol screenings, and he missed others because he failed to call his OLAP monitor once a week. It was then recommended that he have inpatient treatment, but he refused,

threatening to sue his AA sponsor for making such a recommendation. Because of these failures, his OLAP contract was terminated.

Gueli was interviewed by the Cleveland Metropolitan Bar Association, which disapproved his character, fitness, and moral qualifications. He appealed this recommendation to the Board of Commissioners on Character and Fitness. The board appointed a panel, which conducted a hearing and made findings based on the foregoing facts.

The panel was concerned about Gueli's dishonesty, alcohol dependency, and financial irresponsibility, as Gueli was living with his parents and his credit card debt and student loans were all in default. The panel was most troubled by Gueli's "inability to know or tell the truth." The panel expressed grave concern that Gueli had not been honest with his treatment professionals, claiming that he was attending AA meetings when he was not, and that he frequently gave inaccurate testimony, which he stood by until challenged by incontrovertible evidence to the contrary. The panel questioned whether Gueli knew that he was creating his own facts, whether he was just careless, or whether his mental-health issues contributed to an altered perception of reality. Regardless of the cause, the panel found that, at present, Gueli "is not a person upon whom clients, courts, adversaries, and others can rely."

The panel recommended that Gueli's application not be approved but that he be allowed to apply to take the July 2014 bar exam under the conditions that he should continue his treatment with the mental health professionals, enter into a new three-year contract with OLAP, and comply with all of its conditions. The board unanimously adopted the panel's findings of fact and recommendations. Gueli objected, characterizing the board's recommendation as "irrational and unfair."

The Ohio Supreme Court thoroughly reviewed the record and concluded that Gueli's objections were without merit and that the board's findings were supported by the testimony and evidence at the hearing. Gueli's objections corroborated the board's findings that he creates his own facts, which are not based on reality. The Court agreed that Gueli had failed to prove that he currently possesses the necessary character, fitness, and moral qualifications for admission to the Ohio Bar. The Court added that he may submit another application no sooner than November 1, 2013, and may apply to take the July 2014 bar exam if he (1) continues his mental health treatment with his doctors and follows their recommended treatment, (2) enters into a three-year OLAP contract, and (3) complies with all its terms and conditions, to be verified by OLAP.

Permanent denial of admission; solicitation of a minor

In re Philip R. Pilie, 2012 WL 4478359 (La. 2012)

Philip R. Pilie was permanently denied admission to the Louisiana Bar for attempting to have sex with a person whom he believed to be a 15-year-old girl.

Pilie graduated from law school in May 2007 and applied to sit for the Louisiana Bar Examination

in July 2007. Prior to sitting for the exam, Pilie made Internet contact with a person whom he believed to be a 15-year-old girl and told her he wanted to meet her to have sex. The person was actually an undercover police detective posing as a juvenile. When Pilie arrived at the prearranged meeting

location, he was arrested and charged with computer-aided solicitation of a minor and attempted indecent behavior with a juvenile, both felonies.

Pilie amended his bar application to disclose the arrest prior to the July 2007 bar examination date. The Committee on Bar Admissions refused to allow him to sit for the exam.

All criminal charges against Pilie were dropped after he completed a pre-trial diversion program in 2008. He reapplied for permission to sit for the February 2009 bar examination and disclosed his June 2007 arrest and completion of the pre-trial diversion program. Pilie was allowed to sit for the exam and passed, but the committee subsequently informed him that it would nonetheless not certify his character and fitness due to the serious nature of the prior charges against him.

Pilie appealed to the Supreme Court of Louisiana. The Court agreed with the committee and not only denied Pilie's admission but ordered that no applications would be accepted from him in the future. While acknowledging that Pilie was recently married and that he had received psychiatric counseling, the Court found that these circumstances had "little, if any, relevance" to the issue of Pilie's character and fitness to practice law. The Court found that "the lack of a criminal conviction does not prevent this court from considering the effect to be given to the conduct for purposes of our constitutional responsibility to regulate the practice of law" and said that Pilie's misconduct, if committed by a person admitted to the bar, would very likely have resulted in permanent disbarment. The Court could "conceive of no circumstance under which we would ever admit [Pilie] to the practice of law."

CONDITIONAL ADMISSION

Criminal convictions; lack of candor; permanent revocation of conditional admission

In re Wright, 2012 WL 5278462 (La.)


In 2007, Eric Wright was conditionally admitted to the Louisiana Bar for two years. The conditional nature of his admission was based in part on his involvement in an incident of domestic violence. After two additional incidents of violent behavior in 2010, the Louisiana Supreme Court extended the probation for two years. In July 2012, the Office of Disciplinary Counsel (ODC) sought revocation of Wright's conditional admission based on his conviction on two counts of simple battery. The Louisiana Supreme Court remanded this matter for an expedited hearing for Wright to show why his conditional admission should not be permanently revoked. Despite notice, Wright did not appear at the hearing or present any evidence.

At the hearing before the committee, the ODC presented evidence that Wright in September 2011 had been arrested in Baton Rouge and charged with four criminal counts, and that he was tried and convicted of two counts of simple battery on July 2, 2012. Wright's practice monitor confirmed that Wright did not tell him about the arrest or convictions until he was specifically questioned about them. Furthermore, Wright's affidavit of compliance with the conditions of his admission, submitted to the ODC on July 9, 2012, does not mention the July 2 convictions. The committee concluded that Wright's convictions of two counts of battery, his prior criminal history, and his lack of candor with his practice monitor and the ODC were "serious transgressions"

which warranted the immediate revocation of his conditional admission.

On review, the Louisiana Supreme Court said that Wright's infractions were "particularly egregious because they occurred after this court granted him the privilege of practicing law on a conditional basis." The Court stated that Wright "has flagrantly and blatantly ignored his obligations under this court's prior orders and has convincingly demon-

strated he lacks the character and moral fitness to practice law in Louisiana."

Eric Wright's conditional admission was permanently revoked, and his name was permanently stricken from the roll of attorneys. 

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