

FILED

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STATE BAR COURT OF CALIFORNIA

STATE BAR COURT

REVIEW DEPARTMENT

CLERK'S OFFICE

LOS ANGELES

In the Matter of)	SBC-21-M-XXXXX
)	
APPLICANT D,)	OPINION
)	
Applicant for Admission.)	
_____)	

Applicant D¹ appeals a May 27, 2022 Hearing Department decision affirming an adverse moral character determination that he lacks the requisite moral character for admission as an attorney. In this appeal, Applicant D argues the Committee of Bar Examiners of the State Bar (Committee) did not establish he lacks the requisite good moral character. He also raises various constitutional challenges, alleges the Committee used vague standards to deny him a positive moral character determination, and asserts error in discovery and evidentiary rulings. The Committee does not seek review and agrees with the hearing judge’s decision.

After independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the decision of the hearing judge that Applicant D did not make the required prime facie showing of good moral character. As the resolution of this issue is dispositive, we do not address Applicant D’s remaining issues presented on review.

¹ Because this case involves an important legal issue to applicants seeking admission to practice law in California, we have deemed it appropriate for publication (Rules of State Bar, tit. 5, Discipline, Rules Proc. of State Bar, rule 5.159(E).) However, the underlying proceedings and hearings in this moral character matter remain confidential, and the applicant, who we refer to as Applicant D, has not waived confidentiality. (Rules of State Bar, tit. 4, Admissions and Educational Stds., rule 4.4 [applicant records are confidential].) All further references to rules are to the Rules of the State Bar; rules beginning with a “4” are admission rules under title 4 and rules beginning with a “5” are to the Rules of Procedure under title 5.

I. BACKGROUND

Applicant D twice submitted an “Application for Determination of Moral Character” (moral character application) to the Committee. The first moral character application, submitted in 2006, was denied in February 2009. He did not timely perfect a request for review to this court and the Committee’s decision became final. Applicant D was advised he could submit another moral character application in two years. Applicant D’s second moral character application was submitted to the Committee in January 2018. He understood that both the 2006 and 2018 moral character applications were submitted under penalty of perjury and that he had a continuing duty to make disclosures. Applicant D submitted four amendments to his 2018 moral character application in September and December 2018, March 2020, and March 2021.

Approximately two weeks after Applicant D submitted his final amendment and following a recorded informal interview, the Committee issued a written determination that Applicant D had not established his burden of showing good moral character. In its March 19, 2021 letter, the Committee articulated that the reasons for its determination were Applicant D’s lack of candor, lack of respect for the judicial process, insufficient rehabilitation, and his general failure to establish he was of good moral character.

Applicant D sought and received review by the Committee pursuant to rule 4.47.1. Among other contentions, Applicant D argued the Committee’s decision was based on “vague, arbitrary[,] and subjective statements” and inadmissible evidence of disqualifying conduct. Applicant D claimed he did not need to establish rehabilitation as there was no misconduct or evidence of bad moral character that required rehabilitation. The Committee was unpersuaded, and in a June 21, 2021 letter, notified Applicant D of the adverse decision. It repeated the reasons it set forth in its March 19 letter and added that his lack of insight was a considered factor.

Pursuant to rule 4.47 and rule 5.461, Applicant D filed an application for a moral character proceeding in the Hearing Department on August 23, 2021. Trial was held on March 9 and 10, 2022, during which Applicant D was the only witness. At the close of Applicant D's case-in-chief, the Committee argued Applicant D did not meet his initial burden of proof and moved to dismiss the proceeding, which was denied. After the close of evidence, Applicant D filed a closing brief, and the matter was submitted on March 24.

The hearing judge issued her decision affirming the Committee's moral character determination on May 27, 2022. She found, inter alia, that Applicant D did not meet his burden of proof to establish a prima facie showing of good moral character.² Applicant D submitted a motion for reconsideration on June 13, which was denied on July 19. Applicant D filed a request for review pursuant to rule 5.151. Following the submission of briefs, we heard oral argument on February 16, 2023.

² The hearing judge found in the alternative that the Committee rebutted any prima facie showing of good moral character with sufficient evidence of bad acts, such as Applicant D: (1) failing to disclose numerous lawsuits and other legal proceedings on his 2018 moral character application and amendments; (2) being removed as a personal representative of his mother's estate due to a probate court's determination that he was not meeting his statutory and fiduciary obligations; (3) pursuing legally unsupportable litigation; (4) being declared a vexatious litigant in one of multiple lawsuits he filed against his neighbor; and (5) providing dishonest deposition testimony. The judge also found that Applicant D did not present evidence of rehabilitation, because he asserted, as he does on review, that he had done nothing improper that required rehabilitation.

II. MORAL CHARACTER PROCEEDINGS

The California Supreme Court may admit an applicant to practice law upon certification by the Committee that the applicant has fulfilled the requirements for admission. (Bus. & Prof. Code, § 6064;³ rule 4.1; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1067.) One of the requirements is that the applicant be of good moral character. (§ 6060, subd. (b); *Kwasnik v. State Bar, supra*, 50 Cal.3d at p. 1067.) This is because “[a] lawyer’s good moral character is essential for the protection of clients and for the proper functioning of the judicial system itself. [Citation.]” (*In re Glass* (2014) 58 Cal.4th 500, 520.)

A. Legal Framework

The applicant bears the burden of establishing good moral character. (*In re Gossage* (2000) 23 Cal.4th 1080, 1095 [burden rests upon applicant for admission to prove own moral fitness].) A moral character proceeding in the State Bar Court has three phases. First, the applicant must present enough evidence to make a prima facie showing of good moral character. (*In re Menna* (1995) 11 Cal.4th 975, 984; *Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 312.) Even though it is the applicant who bears the burden of proof, all reasonable doubts are ordinarily resolved in favor of the applicant. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 937.) A moral character proceeding is a de novo one, and the judge is not limited to those matters considered by the Committee. (Rule 5.460.)

If an applicant makes a prima facie showing, the matter then moves to the second phase during which the Committee must rebut an applicant’s prima facie showing with evidence of bad moral character. (*Lubetzky v. State Bar, supra*, 54 Cal.3d at p. 312.) If the Committee rebuts the applicant’s prima facie showing, the proceeding enters the third phase in which the burden shifts

³ All further references to sections are to the Business and Professions Code unless otherwise noted.

back to the applicant to prove his rehabilitation from the misconduct or other bad character evidence established by the Committee. (*Ibid.*) In the second and third phases, the parties' burden of proof is by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) The California Supreme Court has long held that an applicant can be denied admission based on conduct that would not result in disbarment of a licensed attorney. (*In re Stepsay* (1940) 15 Cal.2d 71, 75.)

B. Applicant D Failed to Establish a Prima Facie Showing of Good Moral Character

Applicant D asserts that in presenting a prima facie case of good moral character, he need only establish the absence of moral turpitude. He contends that other than a 2006 speeding ticket in South Dakota, he does not have a criminal record, and he has “not violated the rights of any other person.” Applicant D claims that by default, he has shown a respect for laws, others, and the judicial process, and the absence of any disqualifying act shows he has met his prima facie burden that he possesses good moral character. We note the hearing judge reminded Applicant D at the pre-trial conference and again at trial that he had the initial burden to establish a prima facie case of *good* moral character. Disregarding this admonition, and on at least two occasions, Applicant D informed the judge he would proceed with his case by rebutting the Committee's case “in advance.” As discussed below, Applicant D's strategy to focus on refuting the Committee's evidence is not a substitute for his own affirmative burden of proof at the prima facie stage.

A prima facie case of good moral character is not established by default. While an applicant's burden is relatively low, an affirmative showing of good moral character is required. (*Konigsberg v. State Bar of California* (1961) 366 U.S. 36, 41 [“an applicant must initially furnish enough evidence to make a prima facie case”]; *In re Glass, supra*, 58 Cal.4th at p. 520

[applicant must present evidence that is “sufficient to establish a prima facie case”]; *In re Gossage*, *supra*, 23 Cal.4th at pp. 1095-1096 [“the applicant presents a prima facie case of good character and the Committee rebuts with evidence of bad character”].)

As set forth in rule 4.40(B), “good moral character includes qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.” Applicant D directs us to his application and its amendments for affirmative evidence of his good moral character, specifically citing his education and employment history, various licenses and certifications, and personal references. We consider each in turn.

1. Education and Employment

For several years following high school, Applicant D had intermittent periods of employment, and then he attended college in Los Angeles from September 1978 to February 1980.⁴ While attending college, he was occasionally employed at the Los Angeles International Airport. From March 1982 to August 2000, Applicant D worked at three different companies as a manufacturing engineer, with his most significant period of employment occurring at an aerospace company from June 1987 to April 1999. Meanwhile, he earned a Bachelor of Science degree in 2000. The last job Applicant D held was as an aircraft systems engineer from August 2000 to April 2002. Applicant D attended law school in Los Angeles beginning in January 2003 and earned his Juris Doctor degree in January 2007. Applicant D has not passed the California Bar exam, although he has spent several years studying for it.

That Applicant D graduated from college and law school is not itself evidence of good moral character. If Applicant D had provided evidence of high marks or academic awards, for

⁴ These are the dates Applicant D identified in his September 26, 2018 amendment, which differ slightly from the dates provided in his original 2018 moral character application. This minor discrepancy does not affect the outcome of this case.

example, this could have been considered in conjunction with other evidence to make a prima facie case. (See, e.g., *Siegel v. Committee of Bar Examiners* (1978) 10 Cal. 3d 156, 160-164 [prima facie case established by ample evidence, including evidence of high scholarly achievement in high school, college, and law school].) And while Applicant D was continuously employed for 20 years, he has not worked since 2002. Thus, any attribute of good moral character that his prior steady employment reveals, such as, potentially, trustworthiness, is of the distant past and of limited value.

2. Licenses

Turning to Applicant D's various licenses, in February 1980, he was licensed as an aircraft mechanic from the Federal Aviation Administration (FAA), although the license is currently inactive. From June 1982 to April 1999, he received a secret security clearance from the Defense Industrial Security Clearance Office (DISCO) while employed at the aerospace company. In December 1992, the FAA granted him a commercial pilot license, which is currently inactive. In August 2017, he received from the California Bureau of Real Estate a salesperson license, which states, "This license is issued in a nonworking status. The licensee may not perform licensed activities." Indeed, Applicant D testified that he is not permitted to sell real estate. Hence, the evidence shows that the most recent *active* license or credential Applicant D held was his security clearance in 1999.

Applicant D argues that his commercial pilot license reflects good moral character because it "subjected him to the possibility of regulatory violations," and he has no such violations. Since there is no evidence that Applicant D ever utilized his pilot license, his assertion has little, if any, value. (Cf. *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 735 [that applicant had a current license to operate employment agency and did so full-time with

no recent complaints lodged with the agency overseeing the license was considered as part of a prima facie case].)

Applicant D further contends that his security clearance demonstrates that the federal government “entrusted [him] with national security secrets for life” and required an extensive background investigation, citing title 50 United States Code (U.S.C.) section 3341 and a 2017 op-ed article.⁵ First, title 50 U.S.C. section 3341 is part of the Intelligence Reform and Terrorism Prevention Act of 2004, which was not in effect when Applicant D held a security clearance, and thus, cannot be relied on to describe the quality of investigation he underwent, the scope of security clearance he held, or any post-employment obligations. (*See* Intelligence Reform and Terrorism Prevention Act of 2004, Pub.L. No.108-458 (Dec. 17, 2004) 118 Stat. 3638, title III § 3001.) Second, Applicant D’s statements do not provide any evidence as to the type of information sought in the background investigation that could illuminate his good moral character. And third, resolving any reasonable doubt in favor of Applicant D, even if we assumed that a background investigation reflected his good moral character at the time, it is not evidence of Applicant D’s good moral character currently or in the recent past.

Regarding Applicant D’s inactive salesperson license, that application seeks information about prior criminal convictions, pending criminal charges, sex offender registration, adverse actions on business or professional licenses, pending disciplinary actions on licenses, and whether there have been any adverse actions by an administrative agency or professional association regarding a breach of ethics or unprofessional conduct—to which Applicant D responded in the negative (with the exception of a 2006 speeding violation). This is not evidence of good moral character, because the information does not result in *affirmative* evidence of Applicant D’s good character. And finally, we find that his inactive license as an aircraft

⁵ The op-ed article is not part of the record on review.

mechanic itself is not evidence of good moral character, but rather, is evidence of a skill acquired by Applicant D.⁶

3. Personal References

Lastly, Applicant D notes that he provided personal references on his application, and indeed there are five listed. In admissions cases, “‘significant weight’ [is given] in making a prima facie case to testimonials from attorneys on an applicant’s behalf [Citations.]” (*Lubetzky v. State Bar, supra*, 54 Cal.3d at p. 315, fn. 3.) Of his five references, one was from an attorney who had known Applicant D for a year. The remainder consisted of individuals from Applicant D’s past employment and others whom Applicant D had known for many years. However, what is noteworthy is that none of these individuals submitted letters affirming Applicant D’s good moral character or testified on his behalf at trial. Even if not from an attorney, some evidence from those vouching for an applicant’s good character, in addition to other evidence, has long been a hallmark of a successful prima facie case. (*In re Garcia* (2014) 58 Cal.4th 440, 446 [“numerous individuals” including an attorney, law school professor, and administrative law judge praised applicant]; *Lubetzky v. State Bar, supra*, 54 Cal. 3d at p. 314 [testimony, declarations, and letters from attorneys, state senator, colleagues, former teachers, schoolmates, and neighbors attested to applicant’s good moral character]; *Kwasnik v. State Bar, supra*, 50 Cal.3d at p. 1068 [letters from seven judges, seven attorneys, and one pastor praising applicant’s integrity and reputation, professionally and personally]; *Hall v. Committee of Bar Examiners, supra*, 25 Cal.3d at p. 735 [testimony from two non-attorney witnesses averring to applicant’s good moral character]; *Greene v. Committee of Bar Examiners* (1971) 4 Cal.3d 189, 192 [numerous favorable letters of recommendation]; *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 453-454 [letters and testimony of attorney, judge, prosecutor, two state

⁶ Applicant D did not provide evidence or even allege that there was a background investigation associated with this license that could reflect his good moral character.

assemblymen, and law professor affirming applicant's good character]; *In re Stepsay, supra*, 15 Cal. 2d at p. 76 [letters from judges and attorneys regarding applicant's honesty, integrity, and good character].)

In sum, we are left with Applicant D's stable employment that lasted until 2002, a security clearance that ended almost 20 years prior to his 2018 moral character application in addition to other inactive licenses, and not a single witness who vouched, either by testimony or in writing, for his good character. Although the bar is low, we find Applicant D's submission does not meet the threshold to establish a prima facie case of good moral character.

III. CONCLUSION

Based upon our independent review of the record, we affirm the hearing judge's finding that Applicant D did not make a prima facie showing of good moral character. A failure to make a prima facie showing of good moral character is outcome determinative; therefore, we need not address Applicant D's remaining arguments on appeal.⁷ We decline to recommend Applicant D for admission to practice law in California.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.

⁷ Resolution of Applicant D's other arguments would not alter our finding that he failed to make a prima facie showing of good moral character. Applicant D challenges the hearing judge's failure to admit several exhibits, some of which he did not even introduce at trial, that pertain to his effort to undercut the Committee's rebuttal evidence, rather than to establish his good moral character at the prima facie stage. Similarly, he contests the judge's denial of his motion to compel discovery, which he described in his motion to compel as his "effort to discover the specific disqualifying act(s) upon which the Committee based its decision to deny [his] moral character application." We, accordingly, find this issue is not relevant to establishing his prima facie case. Finally, his federal and state constitutional claims that the Committee violated his substantive due process rights, his rights under the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution, and that the Committee did not afford him equal protection of the law as a self-identified older, white male, are directed at the Committee's actions and are not pertinent to his burden of making a prima facie showing.

No. SBC-21-M-XXXXX

In the Matter of
APPLICANT D

Hearing Judge
Hon. Manjari Chawla

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