

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 95- **9072**

ORDER REVOKING PROBATIONARY LICENSE

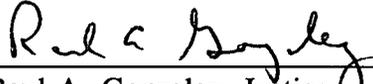
ORDERED:

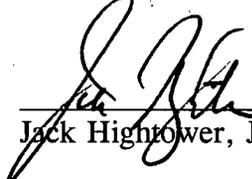
The probationary license issued to COLLEN A. CLARK on November 4, 1993, is hereby revoked, pursuant to the recommendation of the Board of Law Examiners of the State of Texas, as set forth in the attached order of the Board.

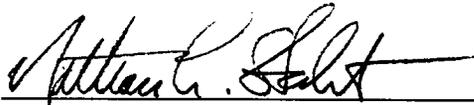
This order shall be effective immediately.

SIGNED AND ENTERED this 23rd day of March, 1995.

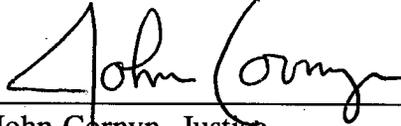

Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice

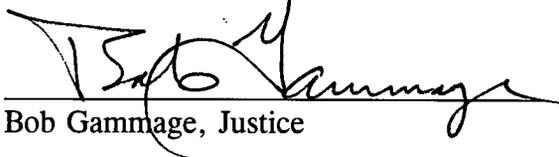

Jack Hightower, Justice



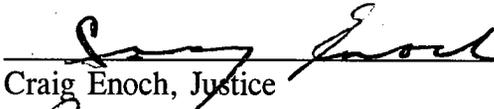
Nathan L. Hecht, Justice



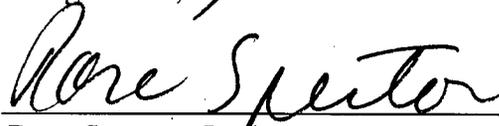
John Cornyn, Justice



Bob Gammage, Justice



Craig Enoch, Justice



Rose Spector, Justice



Priscilla Owen, Justice

BOARD OF LAW EXAMINERS

IN THE MATTER OF) (IN PUBLIC HEARING AT
COLLEN A. CLARK, APPLICANT) (AUSTIN, TEXAS

ORDER

On February 17, 1995, the Board of Law Examiners ("Board"), with Warlick Carr, Chair, presiding, considered in public hearing the matter of Collen A. Clark, probationary licensee. The Board was represented by Bruce Wyatt, Staff Attorney. Mr. Clark was represented by Susan Henricks.

I.

PROCEDURAL HISTORY

Prior to February 17, 1995, Mr. Clark had been the subject of three public hearings before the Board. Following his first hearing on February 26, 1990, the Board voted to approve conditionally his character and fitness and to recommend that, upon passing the Texas Bar Examination, the Supreme Court of Texas issue Mr. Clark a two-year temporary license, subject to his compliance with the conditions imposed by the Board. That temporary license was issued on November 2, 1990.

Mr. Clark was required to appear before a panel of the Board for a second hearing, which occurred on November 21, 1992, to respond to allegations that his arrest for driving while intoxicated during the temporary license period constituted a violation of the conditions of his license justifying revocation of the temporary license. At that time, the hearings panel determined not to recommend that the Supreme Court revoke the temporary license, but found that he suffered from chemical

dependency and voted to recommend that the Supreme Court issue him a new two-year probationary license, subject to additional conditions. Although Mr. Clark began to practice under the probationary license, issued by the Supreme Court pursuant to the recommendation of the Board, he filed an appeal from the Board's order.

After receiving information that Mr. Clark was not complying with the conditions tied to the probationary license, the Board required Mr. Clark's appearance before the Board for a third hearing, on November 5, 1993, to determine whether the Board should recommend that his probationary license be revoked for failure to comply with its required conditions. The matter, however, was settled at the request of Mr. Clark with an order recommending that the Supreme Court extend the term of Mr. Clark's probationary license for an additional year, in exchange for Mr. Clark's agreement to dismiss his appeal and his promise to faithfully comply with conditions of the probationary license.

Mr. Clark continued to practice law under his probationary license as extended by the Supreme Court pursuant to the Board's recommendation, but following the receipt of information that he was again out of compliance with the conditions of that license, the Board sent Mr. Clark notice of a February 17, 1995 hearing, for the purpose of determining whether to recommend that the Supreme Court should revoke Mr. Clark's probationary license, due to his failure to abide by one or more of its conditions.

II.

JURISDICTION

The Board has jurisdiction over this matter pursuant to V.T.C.A., Government Code, Sections 82.028, 82.030, and 82.038 as well as Rules II, IV, X, XV, and XVI of the Rules Governing Admission to the Bar of Texas, adopted by the Supreme Court of Texas, effective February 1, 1994.

III.

FINDINGS OF FACT

After considering the testimony and evidence presented, the Board finds:

1. The Board, on January 18, 1995, gave Mr. Clark proper and timely notice of the February 17, 1995 hearing, by certified mail, return receipt requested (B.E. 4, P. 4-1);
2. Prior to his February 17, 1995 hearing, Mr. Clark had appeared for hearings before the Board on February 26, 1990, November 21, 1992, and November 5, 1993, and the following actions were taken (B.E. 4, Pp. 4-4 - 4-6):
 - a. Following his February 3, 1990 appearance, the Board voted to recommend Mr. Clark for a two-year temporary license, subject to specified conditions, and, upon the recommendation of the Board, the Supreme Court granted Mr. Clark such a license;
 - b. Following his November 21, 1992 appearance, the Board found that Mr. Clark suffered from chemical dependency and voted to recommend him for a two-year probationary, subject to specified conditions, and, upon the recommendation of the Board, the Supreme Court granted Mr. Clark such a license;
 - c. Following his November 5, 1993 appearance, the Board voted to recommend Mr. Clark for a two year probationary license to expire on November 4, 1995, subject to specified conditions, and, upon the recommendation of the Board, the Supreme Court granted Mr. Clark such a license;

3. Under the current probationary license, Mr. Clark is required to attend three Alcoholics Anonymous (hereinafter "AA") meetings per week and to document such attendance on a log which he is to provide to his attorney monitor on a weekly basis, with exceptions to be approved by his attorney monitor, pursuant to condition 3 of his probationary license, as set forth in the Agreed Order dated January 13, 1994 (B.E. 4, P. 4-6);
4. Mr. Clark has violated condition 3 of his probationary license in that:
 - a. He failed to provide the required weekly logs of his AA attendance to his attorney monitor as required for the month of February 1994 until March of 1994 (B.E. 3, Pp. 3-22 and 3-25, and Transcript of Testimony, P. 44);
 - b. He failed to attend AA meetings as required between March 4, 1994 and March 15, 1994 (B.E. 3, P. 3-18 and Transcript of Testimony, P. 44);
 - c. He failed to provide a weekly log of his AA attendance to his attorney monitor as required for the week of November 20, 1994 (B.E. 3, P. 3-7);
 - d. He failed to attend AA meetings as required between November 20, 1994 and November 27, 1994 (B.E. 3, P. 3-7, B.E. 4, P. 4-10, and Transcript of Testimony, P. 44);
 - e. He failed to provide weekly logs of his AA attendance to his attorney monitor as required for the week of December 19, 1994 until December 30, 1994 (B.E. 3, P. 3-2 and Transcript of Testimony, P. 44); and
 - f. He failed to attend AA meetings as required for approximately 10 days in January of 1995 (B.E. 3, P. 3-3, B.E. 4, P. 4-10, and Transcript of Testimony, P. 39).
5. Mr. Clark's probationary license requires him to attend one attorney support group (Lawyers' Concerned with Lawyers, "LCL") meeting per week and to document such attendance as an AA meeting on his AA attendance log, with exceptions to be approved by his attorney monitor, pursuant to condition 4 of his probationary license, as set forth in the Agreed Order dated January 13, 1994 (B.E. 4, P. 4-6);
6. Mr. Clark has violated condition 4 of his probationary license in that:

- a. He failed to attend LCL meetings weekly as required during the month of February 1994 (B.E. 3, P. 3-22 - 3-25 and Transcript of Testimony, P. 25);
 - b. He failed to attend LCL meetings weekly as required during the month of March 1994 (B.E. 3, P. 3-12 and Transcript of Testimony, P. 45);
 - c. He failed to attend LCL meetings weekly as required during the month of August 1994 (B.E. 5, P. 5-1 and Transcript of Testimony, Pp. 9 and 10);
 - d. He failed to attend LCL meetings weekly as required during the months of August and September 1994 (B.E. 5, P. 5-1 and Transcript of Testimony, Pp. 9 and 10);
 - e. He failed to attend LCL meetings weekly as required during the month of October 1994 (B.E. 4, P. 4-9 and Transcript of Testimony, P. 45);
 - f. He failed to attend LCL meetings weekly as required during the month of November 1994 (B.E. 3, P. 3-7, Transcript of Testimony, P. 45); and
 - g. He failed to attend LCL meetings weekly as required during the month of January 1995 (B.E. 3, P. 3-3, B.E. 4, P. 4-10, and Transcript of Testimony, P. 39).
7. Mr. Clark has demonstrated a lack of a good faith effort to comply with the conditions of his probationary license, as set forth in the Agreed Order dated January 13, 1994, in that:
- a. He failed to obtain the advance approval of his attorney monitor not to attend LCL meetings as required, even after being reminded by the Board, by letter dated April 4, 1994, that he must do so (B.E. 4, P. 4-14, B.E. 5, P. 5-1, and Transcript of Testimony, Pp. 9 and 39);
 - b. He failed to obtain the advance approval of his attorney monitor not to attend AA meetings as required during his January 1995 vacation, even after being reminded by his attorney monitor, by letter dated April 13, 1994, that attendance was expected during times of vacation (B.E. 3, P. 3-14 and Transcript of Testimony Pp. 11 and 12); and
 - c. He wrote to the Board on December 29, 1994, not requesting a variance from the specified conditions of his probationary license, but flatly stating his intention to violate the terms of his probationary license and the order of the Board, with his declaration that he would not attend meetings as

required during his January 1995 vacation "unless some [meetings] are very convenient for my family and schedule," although he was aware that his failure to attend meetings as required would not be acceptable, as evidenced by his letter to his attorney monitor, also dated December 29, 1994 (B.E. 4, P. 4-10, B.E. 3, P. 3-3, and Transcript of Testimony Pp. 12 and 39).

8. Mr. Clark's failure to comply faithfully with the conditions of his probationary license as set forth in the Agreed Order dated January 13, 1994, despite his previously stated willingness to do so, is exacerbated by his prior failure to comply faithfully with the conditions of his probationary license as set forth in the Board's Order dated December 11, 1992 (B.E. 4, P. 4-4 - 4-8 and Transcript of Testimony, Pp. 42 - 43).
9. Mr. Clark's behavior, as summarized in the previous findings, constitutes evidence of the following character traits which are undesirable in one charged with the ethical responsibilities required of an attorney:
 - a. Lack of respect for the tribunal and the judicial system, as evidenced by his failure to comply with successive Board orders and the conditions attached to his probationary licenses issued by the Supreme Court of Texas;
 - b. Lack of trustworthiness, as evidenced by his repeated failure to comply with the order and probationary license terms;
 - c. Dishonesty, as evidenced by his breach of his agreement to comply with the conditions attached to his extended probationary license issued by the Supreme Court of Texas in exchange for his promise to comply with its conditions, while at the same time accepting the privilege of practicing law under the license.
10. Condition 13 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, provides that his probationary license may be revoked at any time upon recommendation of the Board if, after a hearing, it is determined that Mr. Clark has violated a condition of such license (B.E. 4, P. 4-7).
11. Condition 14 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, provides, among other things, that at the end of its term Mr. Clark shall apply for a renewal of his probationary license or for a regular license to practice law and that his application shall include evidence satisfactory to the Board that the conditions of his probationary license have been met (B.E. 4, P. 4-7).

12. Condition 15 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, provides, among other things, that the Board may not recommend Mr. Clark for a regular license to practice law until the Board has found that he has successfully completed treatment, has been free from chemical dependency for the preceding two years, and has met the other conditions of his probationary license (B.E. 4, P. 4-8).

IV.

CONCLUSIONS OF LAW

1. That, pursuant to condition 13 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, Mr. Clark's probationary license should be revoked due to his failure to meet the conditions of his probationary license, as established by the findings above;
2. That, pursuant to condition 14 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, Mr. Clark is entitled at this time neither to a renewal of his probationary license, nor to a regular license to practice law, as established by the findings above;
3. That, pursuant to condition 15 of Mr. Clark's probationary license, as set forth in the Agreed Order dated January 13, 1994, the Board may not recommend Mr. Clark for a regular license to practice law due to his failure to meet the other conditions of his probationary license, as established by the findings above;
4. That there is a clear and rational connection between Mr. Clark's lack of respect for the tribunal and the judicial system, as established by the findings above, and the likelihood that he would injure a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if he were licensed to practice law at this time; and
5. That there is a clear and rational connection between Mr. Clark's lack of trustworthiness in carrying out responsibilities, as established by the findings above, and the likelihood that he would injure a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if he were licensed to practice law at this time; and

6. That there is a clear and rational connection between Mr. Clark's dishonesty, as established by the findings above, and the likelihood that he would injure a client, obstruct the administration of justice, or violate the Texas Disciplinary Rules of Professional Conduct if he were licensed to practice law at this time.

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that COLLEN A. CLARK is not presently entitled to a renewal of his probationary license, nor a regular license to practice law, and the Board hereby recommends that the Supreme Court of Texas revoke Mr. Clark's probationary license.

IT IS FURTHER ORDERED that Mr. Clark does not possess the present good moral character or fitness required for admission to the practice of law in Texas at the present time; that Mr. Clark may petition the Board for a redetermination of his moral character and fitness no earlier than February 16, 1996; and that pursuant to Rule 2(b), Rules Governing Admission to the Bar of Texas, Mr. Clark's 1990 bar examination scores are void, and prior to any subsequent admission to the bar, Mr. Clark shall be required to file an application for admission to the bar of Texas and take and pass the Texas Bar Examination.

IT IS FURTHER ORDERED that, upon Mr. Clark's proper and timely filing of a future application for admission and supplemental investigation form, the Board's determination as to his requisite character and fitness at that time shall include an investigation as to whether Mr. Clark has complied with the following guidelines to correct the deficiencies summarized in the Board's findings:

V.

CURATIVE MEASURES

1. Commit no offense against the laws of this state or of any other state or of the United States;

2. Work faithfully at suitable employment as far as possible;
3. Conduct himself in such a way so as to avoid, and not be subject to disciplinary action for, the breach of any regulation, rule, or statute governing any profession in which he may be engaged;
4. Become involved, to the extent possible, in positive activities to demonstrate his rehabilitation from the problems noted in the findings and conclusions of this Order;
5. Demonstrate that he has rehabilitated himself from his lack of respect for the tribunal and the judicial system as described above;
6. Demonstrate that he has rehabilitated himself from his lack of trustworthiness in carrying out responsibilities as described above;
7. Demonstrate that he has rehabilitated himself from his dishonesty as described above;
8. Refrain from engaging in any conduct that evidences a lack of good moral character or fitness;
9. Satisfactorily address the concerns of the Board regarding his good moral character and fitness at any hearing which is set following receipt of his petition for redetermination, if any;
10. Demonstrate that he has successfully completed treatment for his chemical dependency by establishing that since the February 1995 hearing, he has regularly attended and participated in AA meetings and LCL meetings; and
11. Demonstrate that he has been free from active chemical dependency for the two years immediately preceding any petition for redetermination/application for admission to the bar of Texas.

SIGNED this 22nd day of March, 1995.



Warlick Carr, Chair