

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 99- 9060

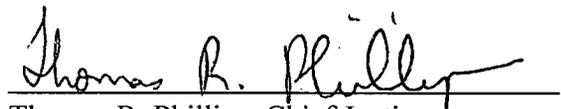
ORDER REVOKING PROBATIONARY LICENSE

ORDERED:

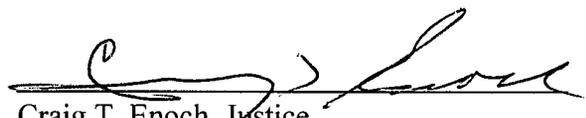
The probationary license issued to JAMES BRIAN ALLEN is revoked, pursuant to the recommendation contained in the attached order of the Board of Law Examiners.

This order shall be effective immediately.

SIGNED on this 19th day of April, 1999.


Thomas R. Phillips, Chief Justice


Nathan L. Hecht, Justice

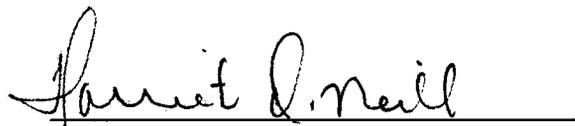

Craig T. Enoch, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Alberto R. Gonzales, Justice

BOARD OF LAW EXAMINERS

IN THE MATTER OF
JAMES BRIAN ALLEN

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)

IN PUBLIC HEARING AT
AUSTIN, TEXAS

ORDER

On January 15, 1999, a three member panel of the Board of Law Examiners ("Board"), with Nancy S. Fuller presiding, heard the matter of James Brian Allen. The Board was represented by Bruce Wyatt, Staff Attorney. Mr. Allen, although advised of his right to counsel, elected to appear pro se. The Board considered, among other things, whether Mr. Allen possesses the present good moral character and fitness required for admission to the practice of law in Texas.

I.

PROCEDURAL HISTORY

Mr. Allen appeared previously in hearings before the Board in 1994, 1996, 1997, and 1998.

Following the 1994 hearing, the Board found that Mr. Allen suffered from chemical dependency, conditionally approved his character and fitness, and recommended him for a probationary license. Mr. Allen began to practice under the conditions of that probationary license, but surrendered the license later that year, while his appeal of the finding of the Board that he was chemically dependent was in progress.

Following the 1996 hearing, after the Third District Court of Appeals in Austin, Texas, had upheld the finding of the Board that Mr. Allen was chemically dependent, the Board found that Mr. Allen lacked the present good moral character required for admission, because he had failed to disclose that he had suffered a relapse in 1995 before he had surrendered his probationary license.

Following the 1997 hearing, after Mr. Allen had filed a petition for redetermination, the Board conditionally approved his good moral character and fitness, and recommended him for a second probationary license. Mr. Allen began to practice under the second probationary license, failed to comply with its conditions, and appeared in a fourth hearing before the Board in 1998.

Following the 1998 hearing, the Board found that Mr. Allen had failed to comply with the conditions of his second probationary license, but recommended him for an extension of his probationary license, subject to amended conditions. Mr. Allen has now failed to comply with those amended conditions.

On December 16, 1998, the Board sent Mr. Allen proper and timely notice, by certified mail return receipt requested and first class mail, of this hearing. The notice letter stated that the general issues to be considered at the hearing were: 1) whether Mr. Allen has failed to comply with one or more of the conditions of his probationary license; 2) if so, whether the Board should recommend that his probationary license be revoked; and 3) if so, whether such failure indicates a lack of the good moral character and/or fitness required for admission.

II.

JURISDICTION

The Board has jurisdiction over this matter pursuant to V.T.C.A., Government Code, Sections 82.004, 82.022, 82.027, 82.028, 82.030, and 82.038 as well as Rules I, II, IV, IX, X, XV, XVI, and XX of the Rules Governing Admission to the Bar of Texas, adopted by the Supreme Court of Texas, including amendments through August 26, 1998.

III.

FINDINGS OF FACT

After considering the evidence and testimony, the Board finds:

1. The Board, on or about December 16, 1998, gave Mr. Allen proper and timely notice, by certified mail return receipt requested and first class mail, of a January 15, 1999 hearing (B.E.1 at 1 and 16).
2. Following a hearing in 1994, the Board found that Mr. Allen suffered from chemical dependency, conditionally approved his moral character and fitness, and recommended him for his first probationary license, which Mr. Allen surrendered during the course of his appeal of the Board's finding that he was chemically dependent (B.E.1 at 3).
3. Following a second hearing in 1996, the Board found that Mr. Allen lacked the present good

moral character required for admission, because he had failed to report his 1995 relapse to the Board, as required by the conditions of his first probationary license (B.E.1 at 4).

4. Following a third hearing in 1997, the Board conditionally approved Mr. Allen's good moral character and fitness, and recommended him for a second probationary license (B.E.1 at 4).
5. Following a fourth hearing in 1998, the Board found that Mr. Allen had violated several conditions of his second probationary license, but recommended him for an extension of his probationary license, subject to amended conditions (B.E.1 at 4 - 8).
6. Mr. Allen has failed to comply with condition 1 of his probationary license as amended, which requires him to commit no offense against the laws of this state, any other state, or of the United States, as evidenced by his commission of the offense of D.W.I., and his use of marijuana, since the time of his fourth hearing before the Board (B.E.1 at 6, B.E.2 at 1, B.E.3 at 1, Exh.A-1, and Testimony).
7. Mr. Allen's failure to comply with condition 1 of his probationary license as amended is indicative of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.
8. Mr. Allen has failed to comply with condition 8 of his probationary license as amended, which requires him to abstain from the use of alcohol and other mind-altering drugs, as evidenced by his use of alcohol and marijuana, since the time of his fourth hearing before the Board (B.E.1 at 7 and B.E.2 at 1).
9. Mr. Allen's failure to comply with condition 8 of his probationary license as amended is indicative of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.
10. Mr. Allen has failed to comply with condition 10 of his probationary license as amended, which requires him to contact each of his attorney monitors a minimum of two times a week, as evidenced by his failure to do so, since the time of his fourth hearing before the Board (B.E.1 at 7 and B.E.2 at 1).
11. Mr. Allen's failure to comply with condition 10 of his probationary license as amended is indicative of the character trait of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.
12. Mr. Allen has failed to comply with condition 15 of his probationary license as amended, which requires him to document his AA attendance on an AA attendance log to be provided on a weekly basis to each of his attorney monitors, as evidenced by his failure to do so, since the time of his fourth hearing before the Board (B.E.1 at 7 and B.E.2 at 1).
13. Mr. Allen's failure to comply with condition 15 of his probationary license as amended is indicative of the character trait of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.

14. Mr. Allen has failed to comply with condition 23 of his probationary license as amended, which requires him to inform the Board in writing within fourteen days of the occurrence of any circumstances which might constitute a breach of the conditions of his probationary license, including any arrest or citation, as evidenced by his failure to report his October 31, 1998 arrest for DWI to the Board, until January 10, 1999 (B.E.1 at 8, B.E.6, and Allen Exh. A-1).
15. Mr. Allen's failure to comply with condition 23 of his probationary license as amended is indicative of the character trait of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.
16. Mr. Allen has failed to comply with condition 4 of his probationary license as amended, which requires that he not engage in any conduct evidencing a lack of good moral character or fitness, as evidenced by his failure to comply with conditions 1, 8, 10, 15, and 23 of his probationary license as amended, as found herein.
17. Mr. Allen's failure to comply with condition 4 of his probationary license as amended is indicative of the character trait of a lack of trustworthiness in carrying out responsibilities, especially given his history before the Board.
18. Mr. Allen's probationary license order provides that his probationary license may be revoked at any time upon recommendation of the Board if, after notice and hearing, it is determined that he has violated any condition of the order (B.E.1 at 8).

IV.

CONCLUSIONS OF LAW

1. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 1 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.
2. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 8 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.
3. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 10 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.

4. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 15 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.
5. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 23 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.
6. There is a clear and rational connection between Mr. Allen's lack of trustworthiness in carrying out responsibilities, as evidenced by his failure to comply with condition 4 of his probationary license as amended, as found herein, 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 continued to be licensed to practice law at this time.
7. Mr. Allen's probationary license should be revoked due to his failure, as found herein, to comply with the conditions of that license.

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that Mr. Allen has failed to comply with one or more of the conditions of his probationary license, that the Board recommend to the Supreme Court of Texas that his probationary license be revoked due to such failure, and that such failure indicates that Mr. Allen lacks the present good moral character required for admission.

IT IS FURTHER ORDERED that Mr. Allen may petition the Board for a redetermination of his character and fitness following a period of three years from the date of the Supreme Court's revocation of his probationary license, and that any such petition for redetermination shall be accompanied by the application and supplemental investigation forms then in effect and all appropriate fees.

IT IS FURTHER ORDERED that, upon Mr. Allen's proper and timely filing of any future petition for redetermination, application, and supplemental investigation form, the Board's determination as to his character and fitness at that time shall include an investigation as to whether he has complied with the following guidelines.

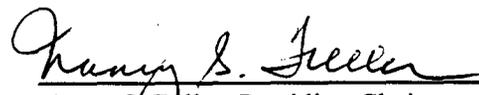
VI.

CURATIVE MEASURES

1. Mr. Allen shall commit no offense against the laws of this state, any other state, or the United States.
2. Mr. Allen shall work faithfully at suitable employment as far as possible.
3. Mr. Allen shall 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. Mr. Allen shall not engage in any conduct that evidences a lack of good moral character or fitness.
5. Mr. Allen shall remain abstinent from the use of alcohol and other mind-altering drugs, except when such drugs are prescribed by a treating physician and taken in accordance with such prescription.

IT IS FURTHER ORDERED that in the event Mr. Allen submits a petition for redetermination, application, and supplemental investigation form, the burden of proof shall be on him to present evidence addressing not only any character and/or fitness issues covered in this Order, but also any additional issues which arise out of the investigation of his petition for redetermination and supporting documents.

SIGNED this 27th day of January, 1999.


Nancy S. Fuller, Presiding Chair