

SUPREME COURT OF GEORGIA

In re Jenkins, 278 Ga. 529

603 S.E.2d 218 (2004) · No. S04Z1637 · Decided September 13, 2004

SUMMARY

The Supreme Court of Georgia affirmed the Board to Determine Fitness of Bar Applicants' denial of Michael Grady Jenkins's certification to sit for the bar examination. The court held that the applicant bears the burden of proving the requisite character and moral fitness, and that the Board's decision must be upheld if supported by any evidence. The court concluded that the evidence regarding Jenkins's absences from judicial duties, lack of candor, and unauthorized practice of law supported the denial.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Georgia
DECIDED	September 13, 2004
DOCKET	S04Z1637
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jenkins appealed the Board to Determine Fitness of Bar Applicants' final decision denying his certification of fitness to practice law.
STANDARD OF REVIEW	The Court will uphold the Board's decision if there is any evidence to support it. The hearing officer's findings and recommendations are not binding on the Board.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Michael Grady Jenkins v. Board to Determine Fitness of Bar Applicants

TOPICS

- appellate procedure
- administrative law
- judicial review of agency action
- standard of review

PRACTICE AREAS

- bar admission
- professional responsibility
- administrative law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Board to Determine Fitness of Bar Applicants could deny Jenkins certification despite the hearing officer's recommendation that he be certified.
2. Whether the Board was bound by the Judicial Qualifications Commission's findings and recommendation concerning Jenkins's conduct.
3. Whether the Board's denial of certification was supported by any evidence.

HOLDINGS

1. The hearing officer's findings of fact and recommendations are not binding on the Board, which may independently determine whether an applicant possesses the requisite character and moral fitness to practice law.
2. The Judicial Qualifications Commission's findings and conclusions, while relevant to an applicant's fitness, are not determinative of the Board's ultimate fitness decision and are not binding on the Supreme Court.
3. The Board's denial of Jenkins's certification was supported by the evidence and therefore had to be upheld.

KEY QUOTATIONS

*“This Court will uphold the Board's decision if there is any evidence to support it.” (*220)*

*“Because the Board's and this Court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant and in favor of protecting the public.” (*220)*

FACTUAL BACKGROUND

Jenkins served as the full-time chief magistrate of Screven County while attending law school in Atlanta, and he was absent from his office up to two days a week for approximately two and one-half years while continuing to receive his full salary. The Board found that this conduct, Jenkins's subsequent denial of neglecting his court duties, and his preparation of legal documents for two individuals constituted evidence bearing on his integrity, candor, ethical cognizance, and moral fitness. Although a hearing officer recommended certification and the Judicial Qualifications Commission had recommended that its public reprimand not impede Jenkins's admission, the Board independently denied certification.

PROCEDURAL HISTORY

Jenkins applied for certification of fitness to practice law after serving as a full-time chief magistrate while attending law school. Following an investigation and formal evidentiary hearing, a hearing officer recommended certification, but the Board rejected that recommendation and denied Jenkins's application. The Supreme Court of Georgia reviewed the timely appeal and affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- In re Lee, 275 Ga. 763, 764, 571 S.E.2d 720 (2002)
- In re Adams, 277 Ga. 34, 35, 585 S.E.2d 879 (2003)
- In re Inquiry Concerning a Judge, 275 Ga. 404, 566 S.E.2d 310 (2002)
- In re C.R.W., 267 Ga. 534, 535(3), 481 S.E.2d 511 (1997)

OPINION

PER CURIAM.

603 S.E.2d 218 (2004) 278 Ga. 529 In re JENKINS. No. S04Z1637. Supreme Court of Georgia. September 13, 2004. Reconsideration Denied October 25, 2004. *219 A. Lee Parks, Eleanor Mixon Attwood, Atlanta, for Appellant. Rebecca S. Mick, Asst. Atty. Gen., Hon. Thurbert E. Baker, Atty. Gen., Kristin Loecke Miller, Asst. Atty. Gen., for Appellee. PER CURIAM. Michael Grady Jenkins appeals the final decision of the Board to Determine Fitness of Bar Applicants (the "Board") denying his certification for fitness to practice law.

For the reasons that follow, we affirm. From January 1993 to December 2002, Jenkins served as the chief magistrate for Screven County, a full-time position.[1] During that time Jenkins attended John Marshall Law School in Atlanta (September 1997 to April 2000).

In 2001 Jenkins applied for certification of fitness to practice law. His application disclosed that the Screven County Board of Commissioners had filed a complaint against him with the Judicial Qualifications Commission ("JQC"), and that body had made a determination to issue a public reprimand.

After Jenkins accepted the public reprimand,[2] the Board requested an informal interview with him to obtain further information. Subsequent to that interview, three additional complaints were filed with the JQC; the Board tabled Jenkins' application until those matters were resolved.

In the interim, Jenkins resigned from his office as chief magistrate, and the JQC notified the Board that the three pending complaints against Jenkins had been closed. Thereafter, the Board independently investigated the conduct underlying the JQC reprimand, and tentatively denied Jenkins' fitness application.

The Board enumerated eight specifications which it determined "constitute a pattern of conduct that demonstrate a lack of integrity, character and the requisite moral fitness required of a prospective member of the State Bar of Georgia." Jenkins requested a formal hearing pursuant to the Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Pt.

A, § 8(a). Following that evidentiary hearing, a hearing officer made the following findings: While attending law school, Jenkins was absent from his office as chief magistrate up to two days a week for two and one-half years while continuing to receive his full salary, thus requiring the county to incur the expense of appointing a deputy magistrate to perform Jenkins' duties and also burdening the office of the district attorney; Jenkins refused a request from the county commissioners that he cease attending law school and return to his full-time duties; at the informal hearing before the Board, Jenkins denied that he neglected the business of his court while he was in school, thus disavowing what he had publicly acknowledged as part of the JQC reprimand "[t]his damages his candor and trustworthiness"; any admission of wrongdoing was "begrudging and qualified, at best"; Jenkins prepared legal documents for two individuals, and in so doing, he engaged in the unauthorized practice of law; in failing to refer those individuals to an attorney, Jenkins "failed to demonstrate appropriate ethical cognizance and maturity"; Jenkins should have recognized that his conduct in this regard was "inappropriate"; although Jenkins conducted his insurance business from the magistrate's office, such was "insignificant in amount"; allegations that Jenkins showed disrespect and lack of ethics toward litigants were not established; four of the five complaints filed against Jenkins by litigants in his court were dropped when Jenkins resigned as magistrate, and therefore were unproven allegations.

In Jenkins' favor, the hearing officer determined that Jenkins sought and received "authorization" to attend law school from the County Manager and a superior court judge *220 who appointed the second magistrate to assist Jenkins.

In addition, the JQC recommended that the public reprimand administered to Jenkins "should not be considered an impediment or prohibition against [Jenkins] being approved to sit for the Bar examination and becoming licensed to practice by the State Bar of Georgia."

The hearing officer balanced the various factors and recommended, "not without some reservations," that Jenkins be certified as fit to sit for the Bar examination. The Board considered the record before the hearing officer and rejected his recommendation.

As a result, Jenkins was notified that he was not certified as fit to practice law, and a formal order was entered by the Board denying his application. A timely notice of appeal was filed. Throughout the application process, the burden clearly rests upon the applicant to prove that he possesses the requisite character and moral fitness to practice law.

In *re Lee*, 275 Ga. 763, 764, 571 S.E.2d 720 (2002). The hearing officer's findings of fact and recommendations are not binding upon the Board. Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Pt. A, § 8(c). "This Court will uphold the Board's decision if there is any evidence to support it."

In re Adams, 277 Ga. 34, 35, 585 S.E.2d 879 (2003). Jenkins asserts that the Board cannot disregard a finding of the JQC that his efforts to improve on his ability as a magistrate judge by attending law school "was undertaken in good faith," and should not be an impediment to becoming licensed to practice law in this state.

However, the Board is an independent body whose function is to inquire into the character and fitness of applicants for admission to the practice of law in this state and to certify as fit those applicants who have established to the Board's satisfaction the requisite integrity and character.

As noted previously, the findings of the hearing officer are not binding on the Board. Nor are the findings and conclusions of the JQC binding upon this Court. See Rules of the Judicial Qualifications Commission, Rule 16(a) (petition to modify or reject the recommendation of the JQC may be brought to the Supreme Court); In re Inquiry Concerning a Judge, 275 Ga. 404, 566 S.E.2d 310 (2002) (recommendations of the JQC are not binding upon this Court).

Similarly, the findings of the JQC in this case, while relevant to the applicant's fitness, are not determinative of the ultimate issue to be decided by the Board. "Because the Board's and this Court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant and in favor of protecting the public."

In re C.R.W., 267 Ga. 534, 535(3), 481 S.E.2d 511 (1997). Considering this caveat, and in light of all the circumstances enumerated above, we find that the Board's decision is supported by the evidence. Accordingly we affirm. Decision affirmed. All the Justices concur, except SEARS, P.J., and BENHAM, J., who dissent. NOTES [1] A law degree/Bar membership was not a requirement of that office.

[2] Jenkins was publicly reprimanded by the JQC for violations of Canon 3A ("The judicial duties of judges takes precedence over all their other activities"), and Canon 5A ("Judges shall not engage in such avocational activities as detract from the dignity of their office or interfere with the performance of their judicial duties") of the Code of Judicial Conduct, in the following manner: "by attending law school in Atlanta, Georgia and therefore being repeatedly absent from the Magistrate Court Office... you have failed to promptly and fairly attend to the business of the court."

By accepting the reprimand, Jenkins acknowledged that misconduct.