

**IN THE SUPREME COURT OF THE STATE OF KANSAS**

In the Matter of the Application of

Ian Bruce Johnson

Docket No. 12320

For Admission to the Bar of the State of  
Kansas

**RECEIVED**

SEP 21 2007

**CAROL G. GREEN**  
CLERK OF APPELLATE COURTS

**PETITIONER'S MOTION FOR RECONSIDERATION**

Pursuant to Supreme Court Rule 7.06, Petitioner, Ian Bruce Johnson, hereby moves the Court to reconsider its Order dated September 5, 2007, denying Petitioner permission to take the Kansas Bar Examination (a copy of this Order is attached hereto as Exhibit "A") on the following grounds:

1. On September 10, 2007, Petitioner submitted to the United States Department of Justice a complaint pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), alleging that the Court's September 5, 2007, Order, when read with the Board of Law Examiners' January 22, 2007 report upon which it was based, violated ADA in that: a) it illegally discriminated against Petitioner because it regarded him as having a mental or emotional disability, where, in fact, he has non-disabling impairments that the Court incorrectly perceived to be disabling; b) it refused to recognize that he had already put in place, successfully and for many years, the accommodations needed to overcome the Court's objections to his psychiatric diagnosis, which the Court continued to perceive to be disabling in spite of those accommodations; and c) it illegally refused to accommodate the continuing disability it perceived by modifying its rules, policies or practices so as to permit him probationary licensure, an accommodation which is permitted to attorneys who are disciplined for offenses

committed under the influence of comparable mental conditions. A copy of Petitioner's Federal administrative complaint pursuant to Title II of ADA is attached hereto as Exhibit "B."

2. The Court should reconsider its September 5, 2007, Order in order to permit time for investigation and conciliation by the United States Department of Justice pursuant to Petitioner's Federal administrative complaint.

3. In its September 5, 2007, Order, the Court relied solely upon the subjective standard stated in Kansas Supreme Court Rule 704, disregarding the objective evidence of both testifying experts and of Petitioner's present employers (who are attorneys), and denying Petitioner's application because he failed to convince the Court subjectively, "by clear and convincing evidence," that he is "mentally and emotionally fit to engage in the active and continuous practice of law." In so doing, the Court ignored—and failed even to mention—Federal statutory and constitutional law that Petitioner timely brought to the Court's attention, that appears to require a more objective standard, or a different treatment of certain evidence than was given by the Court, to wit:

a) The ADA, as noted in paragraph 1, above, and in Petitioner's Federal administrative complaint (Exhibit "B"). The ADA requires regulated entities to rely upon the best available *objective* evidence, rather than subjective fears, stereotypes or speculation, when evaluating the risks arising from an actual or perceived disability. The ADA issues were first noted in the Petitioner's Application to take the Bar Examination (Board of Law Examiners', Petitioner's Hearing Exhibit "A"), and have been briefed throughout this proceeding, most recently in Petitioner's Exceptions to the Report of the Board of Law Examiners ("Exceptions"), pp. 6-8 (Exception No. 5), p. 10 (Exception No. 10) and p. 14 (Exception No. 17).

b) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which, inter alia, requires licensing authorities to apply to new applicants licensing standards comparable to those applied to existing licensees, as explained in *Miller v. Carter*, 547 F.2d 1314, 1316 (7<sup>th</sup> Cir. 1977), *aff'd per curiam sub nom. Carter v. Miller*, 434 U.S. 356 (1978); *Hallmark Cards v. Kansas Department of Commerce and Housing*, 32 Kan.App.2d 715,

Syl. 7-9, 88 P.3d 250 (2004); and *Mattox v. Disciplinary Panel of the U.S. District Court for the District of Colorado*, 758 F.2d 1362, 1366-67 (10<sup>th</sup> Cir 1985). The Court's action in its September 5, 2007, Order, by adopting the reasoning set forth by the Board in its majority report disqualifying Petitioner until he can prove his mental condition creates no risk under any hypothetical future condition, is fundamentally inconsistent with the relatively lenient treatment often afforded already-licensed attorneys who commit disciplinary offenses under the influence of comparable mental conditions. See Kansas Supreme Court Rules 203(a)(5) and 206; and, e.g., *In re Ketter*, 268 Kan. 146, 992 P.2d 205 (1999) discharged from probation 276 Kan. 2 (2003). Petitioner has briefed this issue consistently throughout this proceeding, most recently in his Exceptions, p. 13 (Exception No. 15).

c. The Due Process Clause of the Fourteenth Amendment, which requires courts acting as Bar admissions authorities to base their decisions on the evidence before them and not on speculation. *Konigsberg v. State Bar of California*, 353 U.S. 252, 262 (1957); *Mattox*, 758 F.2d at 1367; *Lubetzky v. State Bar of California*, 54 Cal.3d 308, 312, 285 Cal. Rptr. 268, 815 P.2d 341 (1991). The Board of Law Examiners' recommendation, as adopted by the Court, was based in part upon unsupported speculation concerning Petitioner's future environment the future course of his illness. Petitioner previously stated this issue in his Exceptions, p. 6 (Exceptions No. 4 and 5), p. 9 (Exception No. 9) and p. 10 (Exception No. 10).

d. The freedom of thought guaranteed by the First and Fourteenth Amendments, which prohibits the states from penalizing citizens (including penalizing them by the denial of law licenses) because they harbor disapproved thoughts in their minds. *Baird v. State Bar of Arizona*, 401 U.S. 1, 6 (1971); *Stanley v. Georgia*, 394 U.S. 557, 565-66 (1969). The Board of Law Examiners' report, as adopted by the Court, bases its subjective finding of lack of mental and emotional fitness on the finding that projective psychological tests administered by its independent psychological examiner found that Petitioner still harbors some disapproved thoughts in his mind. This issue did not arise until the Board's expert filed his report (Board of Law Examiners' Hearing Exhibit 17) with the Board, but Petitioner has consistently briefed it since that date, most recently in his Exceptions, p. 5, Exception No. 3.

e. The right of medical privacy guaranteed by the Fourteenth Amendment, which generally "encompasses a right of personal privacy in therapy for physical or psychological disorders." *State v. Hughes*, 246 Kan. 607, Syl. 2, 792 P.2d 1023 (1990). The Board's recommendation, adopted by the Court, found that Plaintiff was receiving maintenance psychiatric treatment and used the fact of that ongoing treatment as a grounds for denial of his application, and, in addition, went beyond the expert testimony before it to find that Petitioner needed "group therapy" not prescribed by his treating psychiatrist and assigned his failure to obtain that group therapy as an additional ground for denial of his application. Both by punishing Petitioner for receiving ongoing

maintenance psychiatric treatment and by interfering in his relationship with his psychiatrist by punishing him for failing to volunteer for therapy not prescribed by his psychiatrist, the Court's September 5, 2007 Order violates Petitioner's right of medical privacy. Petitioner has consistently briefed the right of medical privacy throughout this proceeding, most recently in his Exceptions, pp. 11-13, Exceptions No. 11-14.

4. Article VI, cl.2, of the Constitution of the United States, states:

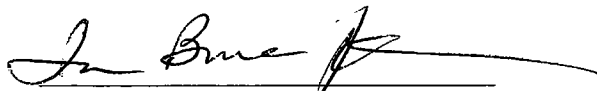
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

Thus, the Constitution and Laws of the United States, including the ADA and the constitutional principles set forth in paragraph 3, above, are binding upon the Court in its performance of its duties as an attorney licensing authority and preempt contrary court rules.

5. The Court should grant reconsideration of its September 5, 2007, order in order to explicitly consider the Federal issues listed in paragraph 3, above, which it previously ignored.

For the foregoing reasons, I urge the court to grant reconsideration of its September 5, 2007, order in this case and to withhold judgment until the United States Department of Justice has a reasonable opportunity to investigate and conciliate the dispute.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ian Bruce Johnson", with a long horizontal flourish extending to the right.

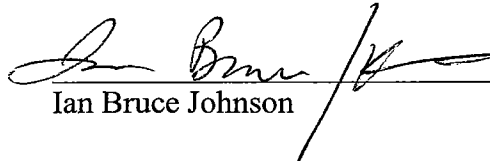
Ian Bruce Johnson, Petitioner  
1601 S.E. Maryland Ave.  
Topeka, KS 66607

**CERTIFICATE OF SERVICE**

I certify that on this 21 day of September, 2007, I mailed a copy of the foregoing Motion for Reconsideration, first class postage prepaid, to each of the following:

Ms. Gayle B. Larkin  
Admissions Attorney  
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Topeka, Kansas 66603

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave., N.W.  
Disability Rights—NYAV  
Washington, DC 20530

  
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Ian Bruce Johnson