

Docket No. 12320

PETITION FOR ADMISSION TO THE BAR
OF THE STATE OF KANSAS
BY WRITTEN EXAMINATION

APPLICANT'S QUESTIONNAIRE AND AFFIDAVIT

IN RE: PETITION OF

Ian Bruce Johnson

(full legal name)

FILED

MAR 15 2006

CAROL G. GREEN

CLERK OF APPELLATE COURTS

IN ACCORDANCE WITH THE RULES RELATING TO THE ADMISSION OF ATTORNEYS, I, Ian Bruce Johnson (full legal name), HEREBY PETITION THE SUPREME COURT OF THE STATE OF KANSAS FOR PERMISSION TO TAKE AN EXAMINATION CONDUCTED BY THE KANSAS BOARD OF LAW EXAMINERS AND, UPON SUCCESSFUL COMPLETION THEREOF, THAT I BE ADMITTED TO PRACTICE LAW IN ALL COURTS OF THE STATE OF KANSAS. TO EVIDENCE MY QUALIFICATIONS TO TAKE SUCH EXAMINATION, I SHOW THE FOLLOWING:

***.

[At p. 10:]

The purpose of the following inquiries is to determine the current fitness of the applicant to practice law. The mere fact of treatment for mental health problems or addictions is not, in itself, a basis on which an applicant is normally denied admission, and the Board of Law Examiners routinely certifies for admission individuals who have demonstrated personal responsibility and maturity in dealing with mental health and addiction issues.

The Board of Law Examiners does, on occasion, deny certification to applicants whose ability to function is impaired in a manner relevant to the practice of law at the time the licensing decision is made, or to applicants who demonstrate a lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to bar admission agencies; further, the responsibility for demonstrating qualification to practice law is ordinarily assigned to the applicant.

The Board of Law Examiners does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress

counseling, domestic counseling, grief counseling and counseling for eating or sleeping disorders. Generally, the Board of Law Examiners does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

If you answer "yes" to questions 32, 33, and/or 34, please provide the names and addresses of each hospital or other facility, the date(s) of the hospitalization(s), and the description of the treatment received. This documentation must accompany your petition for it to be complete. Failure to provide this information will result in your petition being returned to you.

32. Within the last five (5) years, have you been diagnosed with or have you been treated for bi-polar disorder, schizophrenia, paranoia, or other psychotic disorder?

[Answer:] No

33. Have you, since attaining the age of eighteen or within the last five (5) years, whichever period is shorter, been admitted to a hospital or other facility for treatment of bi-polar disorder, schizophrenia, paranoia, or other psychotic disorder?

[Answer:] No

34. Do you currently have *any* condition or impairment (including, *but not limited to*, a mental, emotional, or nervous disorder or condition) not disclosed above which, in any way, currently affects, or if untreated could affect, your ability to practice law?

[Answer:] No

_____.

[Petition for Admission, attachment to Questions 32, 33 and 34:]

Responds to Questions 32-34
Report of Leonel A, Urdaneta, M.D.

Explains why my answers to Questions 32 through 34 are "no," notwithstanding the findings of the Board of Law Examiners in their December 17, 1992, report.

_____.

[Petition for Admission, attachment to Questions 32, 33 and 34, new page:]

Psychiatric Examination
Summary

Name: Mr. Ian Johnson
DOB: 7/26/1955
SS#: 511-64-8103

Mr. Ian Johnson is a married white male from Topeka who came to see me initially in 1991. The initial evaluation was prompted by his need to have a psychiatric expert go in front of the disciplinary administrator of the board to see if he needed to wait three years to take the bar exam. He indicated that he held degrees in chemistry with a Masters and in law from the University of Iowa. At that time he was working as a legal aide for a legal firm in Topeka.

At this point Mr. Johnson continues to be employed doing legal research for the same legal firm. His four children are now 17, 20, 24 and 27.

Mr. Johnson revealed a history of interpersonal difficulties culminating in inappropriate behavior for which he had been charged with a criminal offense for which he had received probation. That record was the main reason for which he had been unable to take the Kansas Bar Examination. He had been diagnosed with a Bipolar II Disorder and had been treated with Lithium.

Mr. Johnson has continued under my uninterrupted care since his initial appointment and up to this point. During this time the medications that he initially took for the alleged diagnosis of Bipolar Disorder were discontinued little by little. He had been treated with the antidepressant Wellbutrin, and with Lithium and Trazodone. The latter medication is used for treatment of insomnia while lithium is used for treatment of Bipolar Disorders.

In 2002, after years of getting to know Mr. Johnson well, his diagnosis of a Bipolar disorder was questioned. Instead, the diagnoses of Asperger's and Attention Deficit Disorder became more probable. At that point, his Lithium was discontinued. His antidepressant had been discontinued several months prior. He was only then kept on the medication Trazodone to help him with his sleep. In the ensuing years, Mr. Johnson has continued to show stability in his mental status. He has never developed symptoms indicative of depression or Bipolar disorders. During all his years of treatment with the undersigned, the quality of his fantasies, the nature of his thinking, and the appropriateness of his judgment have been thoroughly evaluated. He has at no time shown signs of symptoms that would confirm the initial diagnosis of bipolarity.

Mr. Johnson's history, in particular the quality of his affect, his narrow set of interests, and the intellectual quality of his mental life, are instead indicative of the conditions of Asperger's Disorder, mild in intensity.

There is no specific medicinal treatment for Asperger's Disorder. Talking therapy, social skills training, and stable, organized lifestyle make up the treatment approach to this condition. This condition, per se, does not interfere with the practice of most professions, with the development of common sense, with the exercise of good judgment or with the establishment of appropriate relationships. The condition shows most of its negative effects during adolescence and early adulthood at the time when the individual is struggling with developing adult coping skills.

We believe that at this point Mr. Johnson has reached stability and that he poses no threat in any way or risk in any extent to himself or to anyone. We believe that he never had the condition of Bipolar Disorder and that the vicissitudes of his transition from adolescence to adulthood while suffering from a condition that made the transition difficult were due to the presence of Asperger's Disorder.

As indicated, Mr. Johnson has been free of medication for about 3 ½ to 4 years and has demonstrated ability to conduct his life and his affairs with appropriate psychological and social boundaries during all this time.

Sincerely,

s/ Leonel A. Urdaneta, M.D./kah

Leonel A. Urdaneta, M.D.
Board Certified Psychiatrist—KS

_____.

***.

[Petition for Admission, Applicant's Questionnaire and Affidavit, at p. 11:]

37. Have you ever been a party to a civil law suit, other than an action in bankruptcy or divorce?

[Answer:] Yes

If "yes," please provide the caption(s) of the civil case(s), the name(s) of the court(s) of jurisdiction, the address(es) of the court(s) of jurisdiction, the case number(s), and a brief description of the allegations contained in each petition or complaint immediately following this page. Along with your personal statement regarding the event, please attach a copy of the petition or complaint, the dismissal or judgment, and if you were the defendant a copy of the satisfaction of judgment.

_____.

[Petition for Admission, attachment to Question 37:]

Response to Question No. 37

I have been a party to one civil suit other than my 1991 bankruptcy I was plaintiff in *Ian B. Johnson v. State of Kansas*, Kansas Supreme Court, U.S. District Court for the District of Kansas case No. 94-4149-SAC. This suit challenged the Kansas Supreme Court's denial of my 1992 bar application under the Americans with Disabilities Act of 1990. The order dismissing the suit was published at *Johnson v. State of Kansas*, 888 F.Supp. 1073 (D.Kan. 1995) *aff'd* 81 F.3d 172 (10th Cir. 1996)(table).

This Court was a party to that suit and has previously been served a copy of my Complaint therein. A copy of the U.S. District Court's opinion dismissing the suit for want of subject matter jurisdiction pursuant to the doctrine of *Rooker v. Fidelity Trust Co.*, 263 U.S. 43 (1923) and *District of Columbia Court of Appeals v. Feldman* (1983) is attached following this page. That court addressed only the issue of federal jurisdiction, leaving all of the substantive issues under ADA undecided.

The issue raised in that case whether my bipolar disorder diagnosis was an actual "disability" within the meaning of the ADA has been mooted by the subsequent diagnosis reflected in the report of Leonel A. Urdaneta, M.D., *supra*.

However, the issues whether the ADA has application to determinations of character and fitness for admission to the Bar, whether the record of a four-month psychiatric hospitalization followed by years of treatment for bipolar disorder constitute a "record of a disability" for ADA purposes, and under what circumstances it may be permissible to discriminate based on such a record, were not addressed by the federal courts and may become issues on this application.

[Petition for Admission, attachment to Question 37, new page:]

888 F.Supp. 1073

United States District Court
D. Kansas

Ian Bruce JOHNSON, Plaintiff

v.

The STATE OF KANSAS, Kansas Supreme Court,
Defendant

No.94-4149-SAC

April 18, 1995

***.

Michael F. Broemmelmeyer, Broemmelmeyer, Harris & Walters, Chtd., Topeka, KS, for plaintiff.

Carl A. Gallagher, McAnany, Van Cleave & Phillips, P.A., Kansas City, KS, for defendants.

MEMORANDUM AND ORDER

CROW, District Judge.

The case comes before the court on the defendant's motions for summary judgment and dismissal (Dk. 12), the plaintiff's motion to strike and for partial judgment on the pleadings (Dk. 5), and the defendant's motion to strike affidavit of the plaintiffs counsel (Dk. 30). The plaintiff, Ian Bruce Johnson ("Johnson") filed this action alleging the defendant Kansas Supreme Court violated Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131, et seq.,^[fn1] when it denied his application to sit for the Kansas bar examination. Specifically, Johnson alleges that he is a qualified individual with a disability, namely chronic bipolar affective disorder, and that the Kansas Supreme Court denied his bar application because of his disability.

***.

STATEMENT OF UNCONTROVERTED FACTS

1. Johnson submitted a verified petition for admission to the Bar of Kansas to the Clerk for the Appellate Courts of Kansas on April 29, 1992. Johnson fully and accurately answered all questions required on the petition form. Johnson also submitted all requested information, including four sworn certificates of good moral character. In his petition or in connection with it, Johnson further established that he met the educational requirements set out in the Kansas Supreme Court's rules.

***.

9. In response to the Disciplinary Administrator's request, Johnson furnished the Board with a psychiatric evaluation from Leonel A. Urdaneta, M.D. This psychiatrist diagnosed Johnson as suffering from "Bipolar Affective Disorder presently in remission." Dr. Urdaneta subsequently testified that this disorder presents with various symptoms at different points with one being "hypersexuality." Dr. Urdaneta also testified that recurrence of the bipolar disorder would be more likely when plaintiff was placed under stress. Dr. Urdaneta agreed that the practice of law was a stressful profession. Dr. Urdaneta testified that bipolar disorder is chronic and tends to worsen with age. Dr. Urdaneta indicated that Johnson was stable, reliable and in remission in that he did not present with any major symptoms of his mental disorder. Dr. Urdaneta had not reviewed plaintiff's psychiatric records from the University of Iowa, Topeka State Hospital or the Menninger Foundation in diagnosing plaintiff's condition. Dr. Urdaneta also suggested that plaintiff was a high risk for recurrence with increased stress without treatment. Johnson has continued his treatment with Dr. Urdaneta from the date of his hearing before the Board to the present.

10. In the fall of 1989, the Disciplinary Administrator told Johnson that he believed the Kansas Supreme Court would not admit any applicant having a history of serious mental disorder, including plaintiff, unless that applicant could prove his or her condition to be "cured" - i.e., could present psychiatric expert testimony that the condition had been asymptomatic without treatment for at least two years and was, with reasonable medical certainty, expected to continue asymptomatic without treatment indefinitely in the future.

11. On August 28, 1992, in an attempt to encourage Johnson to withdraw his application without a hearing, the Administrator reiterated his belief that it is the Kansas Supreme Court's practice to require applicants who have a history of bipolar disorder to prove a "cure" as a prerequisite to admission.

12. At this same meeting on August 28, 1992, the Administrator also stated his belief that it is not within the authority of the Board of Law Examiners to recommend probationary admission of an applicant to the Kansas Bar.

13. Johnson did not submit to the Board a plan for supervision by a "supportive and experienced colleague" as suggested by Dr. Urdaneta. Johnson expected the Board and the Kansas Supreme Court to advise him of the conditions for admission and what type of probationary arrangements he could make for any required supervision and reporting. A principal with the law firm who presently employs Johnson as a legal assistant indicated that the firm would continue his employment as an assistant but would not employ him as an associate attorney. The principal explained that the firm did not need another attorney, that Johnson was too timid, and that Johnson lacked certain social skills.

14. The Board recommended Johnson be denied permission to sit for the Kansas Bar Examination for failure to prove "requisite fitness and character" by clear and convincing evidence.

15. Johnson filed exceptions to the Board's report contending in part that the Board's recommendations violate the ADA.

16. The defendant Kansas Supreme Court accepted the Board's recommendations and denied permission to Johnson to sit for the bar.

***.

The defendant Kansas Supreme Court's principal argument is that Johnson's case is an improper collateral attack upon its decision denying his application to sit for the bar examination. For that reason, the defendant insists this court is without subject matter jurisdiction to review the particular application decision.

***.

The "'federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.'" *Centifanti v. Nix*, 865 F.2d at 1430 (quoting *Pennzoil*, 481 U.S. at 25, 107 S.Ct. at 1533 (Marshall, J., concurring)). Johnson fully briefed nearly identical disability allegations before the Kansas Supreme Court. Those disability allegations were necessarily addressed and decided when the court denied Johnson's petition.[fn6] See *Michigan v. Long*, 463 U.S. 1032, 1040-41, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983) (When "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any

possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so."); *Arizona v. Evans*, ___ U.S. ___, 115 S.Ct. 1185, 131 L.Ed.2d 34, 41 (1995). Because Johnson now wants to assert in federal court the same disability claims he made to the Kansas Supreme Court, he essentially asks the federal court to review the state court's denial of those claims. *Landers Seed Co., Inc. v. Champaign Nat. Bank*, 15 F.3d 729, 733 (7th Cir.), cert. denied, ___ U.S. ___, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994); *Leaf*, 979 F.2d at 599 (Because the plaintiff "raised the same barrage of claims" in the state proceedings, the plaintiff's federal claims are "inextricably intertwined with those raised before and addressed by the" state court.) Federal court review of the Kansas Supreme Court's decision on those disability claims lies exclusively with the United States Supreme Court. 28 U.S.C. § 1257.

Somewhat in passing, Johnson complains that if only formal policies may be challenged and not the application of those policies to particular applicants, then "any state court may discriminate against applicants having any particular disability with impunity by doing so informally (to divest the federal district court of jurisdiction) and refusing to discuss ADA issues in reports and orders denying applications (to evade review by the United States Supreme Court)." (Dk. 24 at 10-11). That a state's highest court would knowingly violate a federal law and then would actively conceal its violation seems such an unlikely proposition that it hardly warrants discussion, let alone being cause for exercising jurisdiction in the face of the Rooker-Feldman doctrine. "[A]ny concern about whether the Feldman rule effectively isolates state court decisions from federal review is unfounded." *Facio v. Jones*, 929 F.2d at 545. First, the state court decisions are subject to certiorari review by the United States Supreme Court. Second, a litigant in the future may be able to prove that the Kansas Supreme Court has promulgated rules in a non-judicial proceeding regarding the admission of bar applicants with mental impairments. Johnson has fully pursued his remedy in the Kansas Supreme Court and subsequently in the United States Supreme Court and is bound by the adverse result. *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125 (7th Cir. 1977).

IT IS THEREFORE ORDERED that the defendant's motion for summary judgment and dismissal (Dk. 12) is granted on the ground that the court lacks subject matter jurisdiction
