

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO: Bar-12-14

F. LEE BAILEY

v.

ORDER ON RECONSIDRATION

BOARD OF BAR EXAMINERS

This matter is before the Court on petitioner F. Lee Bailey's Motion for Reconsideration of the Court's Order of April 18, 2013, and the Board of Bar Examiners opposition thereto. The motion was heard on June 6, 2013.

In its Order of April 18, 2013, the Court found that Bailey had proven, by clear and convincing evidence, that he possessed sufficient good character and fitness to be admitted to the practice of law in Maine, but with one reservation regarding an income tax debt of nearly \$2,000,000 that was and remains in litigation on appeal. The Court found that: "This issue remaining unaddressed is the only bar to this Court's granting Bailey a certificate of good character and fitness to be admitted to the practice of law." Accordingly, the Court declined to direct issuance of a certificate of good character and fitness.

Bailey seeks reconsideration of that Order, arguing that the tax debt that is still unresolved and in litigation, although large, should not prevent his admission to the bar, absent some misconduct in failing to pay the debt once it becomes final. On reconsideration, Bailey's argument has merit.

The Law Court has addressed the outstanding debt issue in two opinions related to only one bar admission application, *In re Hughes*, 594 A.2d 1098 1101-02 (Me. 1991); *Application of Hughes*, 608 A.2d 1220 (Me. 1992). Hughes had been disbarred in Georgia, 594 A.2d at 1101 n. 3, after being convicted of a felony, theft of over \$400,000, and falsifying documents. 594 A.2d at 1102. At the time of her application for admission in Maine, and despite a court ordered restitution requirement, Hughes had not repaid any of the more than \$400,000 stolen from her clients. 608 A.2d at 1220. Although Hughes had made no payments of the court ordered restitution, this financial history was not held against her and did not impede the finding that she was qualified for admission. The Court observed: "The evidence of Hughes's financial history provides adequate support for the conclusion that her failure to make restitution does not preclude a finding of good moral character." 608 A.2d at 1220.

A general survey of the state precedent on the debt payment issue suggests that the existence of a debt, by itself, may not result in finding of lack of good moral character. Rather, findings of failure of proof of good moral character tend

to be based on misconduct regarding effort—or lack of effort—to pay the debt, or misconduct referencing the debt payment obligation in the bar admission process. *See Failure To Pay Creditors as Affecting Applicant's Moral Character for Purposes of Admission to the Bar*, 108 A.L.R. 5th 289, §§ 2(a), (b) (2004). “It has been held that it is not the fact of debt, but the absence of a genuine effort to meet one’s responsibilities that serves to establish a lack of the character and integrity expected and required of one who seeks to become a member of the bar.” *Id.* at *2(b). *See opinions cited in April 18, 2013 Order: In re Hyland*, 663 A.2d 1309, 1316 (Md. 1995); *In re Steele*, 865 P.2d 285 (Mont. 1993); *Matter of Anonymous*, D-51-09 (N.Y. App. Div., Third Dept., Sept. 25, 2009) (unreported). *See also In re Ford*, 854 N.E.2d 501, 502-04 (Ohio 2006) (application rejected not because of debt itself but applicant’s “long-standing pattern of living beyond his means, and failing to satisfy his financial commitments”); *In re Manayan*, 807 N.E.2d 313, 314-17 (Ohio 2004) (application rejected because of demonstrated, continuous neglect of financial responsibilities that reflected adversely on character and fitness).

In contrast to Hughes, Bailey has been convicted of no crime, and he has paid or resolved every obligation he has been ordered to pay by a final judgment of any court. He is actively litigating and seeking to resolve or compromise his current tax debt. The record demonstrates, to the clear and convincing evidence

standard, that Bailey is making a “genuine effort” to meet his responsibilities, indicating he has “the character and integrity expected and required of one who seeks to become a member of the bar.” *Failure To Pay Creditors . . .*, 108 A.L.R. 5th 289 at *2(b).

In the totality of the circumstances, and considering the precedent indicated in *Hughes* and the other cited opinions and materials, the tax debt currently in litigation should not prevent a finding of good character and fitness to practice law. At this point, the Court incorporates by reference into this Order the entirety of its Findings, Conclusions and Order of April 18, 2013, amended only to reconsider the treatment of the tax debt issue. Based on the findings and conclusions stated in the April 18 Order and this Order, the Court finds by clear and convincing evidence that Bailey has demonstrated the requisite good character and fitness to practice law in the State of Maine.

The Court respects the thorough consideration given to Bailey’s application by the Board of Bar Examiners, the sincere concerns expressed by the Board in its decision, and the difficulty of some of the factual and legal issues addressed in this proceeding. Accordingly, the Court will stay any effect of its Order remanding with direction to issue a certificate of good character and fitness to practice law until expiration of the time for taking an appeal and decision on an appeal, if an appeal is taken by the Board.

The Court ORDERS:

1. The Motion for Reconsideration is Granted.
2. The Court finds that F. Lee Bailey has demonstrated the requisite good character and fitness to practice law in the State of Maine.
3. Pursuant to Maine Bar Admission Rule 9(d)(6)(E), remanded to the Board of Bar Examiners with instructions to issue a certificate of qualification to F. Lee Bailey, provided that the requirements of Rule 8(2) and Rule 8(3) are met. He may be admitted to the bar upon presentation of this certificate and demonstration that he has otherwise qualified for admission to the bar.
4. This Order, while final upon signature and docketing, is stayed in effect until expiration of the time for filing an appeal, or decision on an appeal, if an appeal is taken by the Board of Bar Examiners.

Dated: June 7, 2013

FOR THE COURT,

/S/

Donald G. Alexander
Associate Justice