

in the State of Florida.¹ Allen subsequently filed an application for certification of fitness to practice law so that he could take the Georgia Bar Examination.² The Board tentatively denied certification, on the ground that Allen's actions that led to the Florida disciplinary demonstrated a lack of integrity and character and on the ground that Allen had demonstrated a lack of accountability and candor in communicating with the Board about the Florida disciplinary. Allen requested a formal hearing,³ and this Court appointed a hearing officer, who recommended that Allen not be certified as fit to practice law.⁴ The Board thereafter entered a final denial of Allen's application for certification of fitness to practice law,⁵ and Allen has now appealed to this Court.

[2, 3] "Throughout the application process, the applicant bears the burden of establishing her fitness to practice law."⁶ In this case, we conclude that the record supports the conclusion that Allen has demonstrated a lack of candor with regard to the Florida disciplinary and a lack of willingness to take responsibility for his actions that led to that disciplinary. Moreover, we conclude that that factor, coupled with Allen's actions that led to the disciplinary in the State of Florida,

1. *In re J.L.A.*, 271 Ga. 873, 523 S.E.2d 562 (1999). See Rules Governing Admission to the Practice of Law, Part C, Section 2(f), which provides that a person who has "been the subject of private or public lawyer discipline of any nature including a letter of admonition in any United States jurisdiction" may not be eligible to sit for the Georgia Attorney's Exam.

2. Section 2 of Part A of the Rules Governing Admission to the Practice of Law provides that the Board "shall certify as fit to practice law those applicants who have established to the Board's satisfaction that they possess the integrity and character requisite to be members of the Bar of Georgia."

3. See Rules Governing Admission to the Practice of Law, Part A, Section 8(a), which provides that after the Board tentatively denies certification, the applicant has a right to request a hearing before a final ruling by the Board on his application for fitness. Before the hearing occurs, the Board must provide the applicant with "specifications" of the reasons for its tentative denial of his application.

4. Contrary to Allen's contention, we conclude that the hearing officer's written findings of fact

demonstrate that Allen has failed to establish that he is fit to practice law in this State.

Decision affirmed.

All the Justices concur.



275 Ga. 812

In the Matter of William Y. BARNES.

No. S02Y1212.

Supreme Court of Georgia.

Nov. 25, 2002.

Petition for Voluntary Discipline.

William P. Smith, III, Gen. Counsel State Bar, E. Duane Cooper, Asst. Gen. Counsel, State Bar, for State Bar of Georgia.

C. Alan Nicholson, for Barnes.

and recommendation were adequate. See *id.* at Section 8(c), which provides, in part, that the hearing officer "shall make written findings of fact and recommendations to the Board which, however, shall not be binding upon the Board." Moreover, although it appears that the hearing officer confused the standards for eligibility to sit for the Georgia Attorney's Exam with the standards for determining fitness to practice law, we conclude that that confusion is not a sufficient reason to reverse the Board's decision, as the hearing officer's findings and recommendation are not binding on the Board, *id.* at Section 8(c); *In re C.R.W.*, 267 Ga. 534, 481 S.E.2d 511 (1997), and are similarly not binding on this Court, who, applying the appropriate standards, makes the "ultimate decision regarding a Bar candidate's fitness to practice law." *In the Matter of Spence*, 275 Ga. 202, 204, 563 S.E.2d 129 (2002).

5. Contrary to Allen's contention, we conclude that the Board adequately stated its reason for denying Allen's application for certification of fitness.

6. *In re C.R.W.*, 267 Ga. 534, 481 S.E.2d 511 (1997).

IN RE CLARKE

Cite as 573 S.E.2d 81 (Ga. 2002)

PER CURIAM.

William Y. Barnes has petitioned this Court for a three-year suspension of his right to practice law in this State. Barnes admits that he paid a paralegal and the paralegal's business for the referral of cases and clients and thus violated Standards 13 and 26 of Bar Rule 4-102(d). Standard 13 prohibits a lawyer from compensating a person or organization to recommend or secure employment by a client or as a reward for a recommendation. Standard 26 prohibits a lawyer or a law firm from sharing legal fees with a non-lawyer. The State Bar of Georgia does not oppose Barnes' petition, and the special master recommends accepting it.

We have reviewed the record and agree to accept Barnes' petition. Accordingly, William Y. Barnes is hereby suspended from the practice of law for a period of three years. Moreover, the following conditions are imposed upon his reinstatement to the Bar: (1) Barnes must provide certification to the Office of the General Counsel of the State Bar that he has passed the Multi State Professional Responsibility Exam, for which he may sit no sooner than the end of the 33rd month after the effective date of his suspension; (2) Barnes must file that same certification with the State Disciplinary Board; and (3) Barnes must file any request for readmission, showing his satisfaction of all conditions, with the Review Panel of the State Disciplinary Board, which will review the record including the request and the State Bar's response and file a report and recommendation on the request with the Supreme Court, which will then issue a final ruling thereon.

Barnes is reminded of his duties and responsibilities under Bar Rule 4-219(c).

Three-year suspension.

All the Justices concur, except HUNSTEIN and THOMPSON, JJ., who dissent.

HUNSTEIN, Justice, dissenting.

I cannot agree with the conclusion reached by the majority that the appropriate level of discipline in this case is a three-year suspension. I believe Barnes' conduct in committing violations of Standards 13 and 26 man-

dates the sanction of disbarment. Barnes admits that he violated Standards 13 and 26 by compensating a non-lawyer organization, Professional Management, Inc., for referrals of personal injury clients. Because the allegations against Barnes reflect serious disciplinary infractions which support the sanction of disbarment, I would reject Barnes' petition for voluntary discipline. Accordingly, I must respectfully dissent to the majority's imposition of a three-year suspension in this case.

I am authorized to state that Justice THOMPSON joins in this dissent.



275 Ga. 814

In the Matter of J. Caleb CLARKE III.

No. S02Y1547.

Supreme Court of Georgia.

Nov. 25, 2002.

Petition for Voluntary Discipline.

William P. Smith, III, General Counsel, State Bar, Paula J. Frederick, Asst. Gen. Counsel, State Bar, for State Bar of Georgia.

J. Caleb Clarke, III, Atlanta, for appellee.

PER CURIAM.

This matter is before the Court on Respondent J. Caleb Clarke's petition for voluntary surrender of his license to practice law filed pursuant to Bar Rule 4-227. In his petition, Clarke admits that while serving as the administrator of an estate, he withdrew funds from the estate account for his own personal use (later paying it back), appropriated for his own personal use an automobile that was property of the estate even though he told the heirs he had sold the vehicle and deposited the proceeds into the estate account, and failed to file proper income tax returns on behalf of the estate between 1996 and 1999. Clarke admits that his conduct