ORIGINAL 2016 OK 98

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
SEP 20 2016
MICHAEL S. RICHIE
CLERK

IN RE: THE APPLICATION OF JAMES M. GREEN FOR ADMISSION TO THE OKLAHOMA BAR ASSOCIATION,	)
Appellant,	)
v.	) SCBD No. 6327
OKLAHOMA BOARD OF BAR EXAMINERS,	)
Appellee.	) FOR OFFICIAL PUBLICATION

WATT, J., with whom COLBERT and GURICH, JJ., join, dissenting:

¶1 The majority opinion chooses to ignore the plain language of Rule Two and departs from this Court's Rule Two jurisprudence that has been in effect for decades.

¶2 Major Green's status at the time he applied for admission by reciprocity under Rule Two was, and remains, the same.

¶3 His sole authority to practice military law in the JAG Corps is granted exclusively by a certificate issued by the United States military and remains valid for only so long as he remains on active duty or joins the National Guard upon his retirement from active duty.

Rec'd (date) 9-20-16
Posted
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¶4 Major Green's authority to practice STATE LAW is derived from his license to practice law from the State of Florida which is a non-reciprocal state with Oklahoma. Major Green's privilege to practice law in Virginia was obtained by his successful completion of the Virginia State Bar exam in 2014, some two years and seven months ago.

¶5 As the majority opinion is aware, the minimal requirement for admission by motion under our Rule Two is "the continuous practice of law in a **RECIPROCAL STATE** for five of the last seven years immediately preceding the filing of his request for admission on motion under Rule Two."

¶6 CLEARLY, anyone, with even a high school education, would conclude from the clear language under Rule Two that Major Green was and is now unable to meet the minimal requirements for admission under Rule Two."

¶7 Accordingly, our Board of Bar Examiners, in whom we have reposed our trust, followed the law and our rules and correctly denied Major Green's application for admission by motion.

¶8 Yet, for reasons that are inexplicable to me, the majority totally ignores the plain language of Rule Two and would allow his admission to practice law in this state based upon his commendable service in the United States Marine Corps.

¶9 When I see Old Glory waving in the Oklahoma wind or hear our national

anthem, my blood pumps red, white, and blue. I pray each and every day for those serving in our military and their families. I am thankful for the sacrifices they make to keep me and mine free. When a person enters the military, an oath is taken to serve and protect. When I took office I, likewise, took an oath to uphold the laws and constitutions of this nation and state. Honoring that oath, requires me to make difficult decisions. Nevertheless, doing so ensures that I do not weigh what is intended to be an "even playing field" in any party's favor. *Kimble v. Kimble*, 2011 OK 95, p.3, 264 P.3d 1229 (Kauger, J., writing for the majority). Because I strive to be faithful to my oath, I make one of those difficult decisions and dissent from the majority opinion based on what solely appears to be sympathy for what it mistakenly seems to believe will be a popular decision. The opinion ignores the rules established by this Court for Rule Two admissions, and gives an unwarranted advantage to the applicant over other attorneys seeking the privilege to practice in Oklahoma without having first taken the Oklahoma Bar exam.

¶10 In reaching the result it does, the majority ignores the clear language of Rule Two and long established conditions for the application of statutory construction. Rule Two requires that an attorney applying for admission must have practiced law in a "reciprocal state" for a minimum of "five of the seven

years immediately preceding application" for admission under the Rule. The Rule, itself, also provides in clear, mandatory, and precise language, "reciprocal state" shall mean a state, not some nebulous "jurisdiction", as the majority seeks to do. *Keating v. Edmondson*, 2001 OK 110, p. 12, 37 P.3d (Kauger, J. writing for the majority); *Washington v. State*, 199 OK 139, 915 P.2d (Kauger, J. writing for the majority); *Minie v. Hudson*, 1997 OK 26, 934 P.2d 1082 (Kauger, J. writing for the majority). Where, as here, such precise language exists, this Court does not engage in statutory construction. *Keating v. Edmondson*, see supra, (Kauger, J. writing for the majority); *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272 (Kauger, J. writing for the majority); *Carlson Reserve Corp. v. State*, 1991 OK 49, 811 P.2d 1320 (Kauger, J. writing for the majority).

¶11 Even were statutory construction necessary here, it would not save the majority's reasoning or support its position. When it looks to including service in the military as comparable to service in a reciprocal state, it does so not under the portion of the Rule providing how such service is defined. Rather, it looks to how the requirement of the practice of law may be satisfied within the meaning of the Rule. It claims that failing to allow Green to be admitted is incongruous as it would relate to military spouses, in like circumstances, the majority's reasoning also fails. Such military spouses are not granted the full privilege of the practice

of law in the State of Oklahoma in perpetuity. Rather, they may apply for a special **TEMPORARY** Permit, based on a set of stringent requirements, which terminate unless the spouse is admitted under some other rule the moment the military member leaves the service or is reassigned outside the State of Oklahoma.

¶12 Rule Two has the force and effect of law. *Berrand v. Laura Dester Center*, 2013 OK 18, p.14, 300 P.3d 1188; *Charley v. Britton-Johnson Co.*, 1927 OK 447, 263 P. 1096; *Carlile v. National Oil & Dev. Co.*, 1921 OK 163, 201 P. 377.

¶13 As it relates to the definition of "reciprocal state", it utilizes clear, mandatory, and precise language. *Keating v. Edmondson*, see supra, (Kauger, J. writing for the majority). *Minie v Hudson*, see supra, (Kauger, J. writing for the majority). There is **NO ROOM** for statutory construction to reach what the majority seems to believe is a more palatable result in this case. I have the greatest respect for Major Green and his service to our country. However, he has not met the requirements for Rule Two admission.

¶14 The result reached by the majority today is at best, "judicial activism" and at worst, a violation of our oath of office.

¶15 Reciprocity is a privilege and not a right.

¶16 Indeed, a great majority of the states grant reciprocity to lawyers of

sister states who meet their requirements, which Major Green clearly has not.

¶17 I know of **no state** that grants reciprocity to a jurisdiction but only to a sister "state".

¶18 My privilege to practice law in the states of Texas and Oklahoma are by passing the state bar examination and thereafter receiving a license issued by the states of Texas and Oklahoma, not some "jurisdiction".

¶19 Likewise, Major Green's privilege to practice law in Florida and Virginia are by virtues of licenses issued by the states of Florida and Virginia, not a jurisdictional bar!

¶20 The majority opinion is not only contrary to law and our rules but is, in my opinion, an affront to the Oklahoma Board of Bar Examiners, an outstanding group of lawyers who are appointed by each Justice on this Court and in whom we have reposed our trust for over four decades. The result of the majority opinion, which I believe to be totally nonsensical, would eviscerate Rule Two as we know it and have applied it for decades.

¶21 Under our Constitution, our Supreme Court controls the practice of law within the State of Oklahoma and we, therefore, are the gatekeepers for those who wish to obtain the privilege of the practice of law, either by taking and passing the Oklahoma State Bar examination or reciprocity under Rule Two.

¶22 The majority opinion would effectively amend Rule Two and allow admission of this applicant based solely on being on active military duty.

¶23 To do so would, in my humble opinion, make this a special law that gives disparate treatment to a vastly large group of potential applicants, i.e., those presently serving as military lawyers across our nation and around the world.

¶24 This "giant step", notwithstanding its clear violation under Rule Two, would set the precedent to allow any JAG officer in all branches of our military service to be admitted to the practice of law in Oklahoma without fulfilling our requirements under Rule Two.

¶25 The dangerous step the majority takes, solely out of considerable sympathy for Major Green's position, would have the potential for future litigation.

¶26 No other state has ever taken this giant and dangerous step of wiping out the specific time of actual and continuous practice in a reciprocal state as the majority opinion would do. The majority opinion, if adopted, would result in unfair and disparate treatment not only to those out of state lawyers seeking admission by motion under Rule Two, but to all licensed lawyers now practicing within our state, which has suffered an economic downturn not seen in many years. Lastly, under our existing Rule Two, Major Green has two options

available to him: 1) to wait several more years until he has five of the last seven years of continuous practice in the State of Virginia, or 2) sit for and successfully complete the Oklahoma Bar examination.

¶27 Therefore, I dissent.