

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. Bar-23-14

ALLISON MCGONAGLE,

Petitioner

v.

**DECISION OF
SINGLE JUSTICE**

BOARD OF BAR EXAMINERS,

Respondent

Procedural Background

Allison McGonagle applied for admission to the Maine bar on April 15, 2021. She took the Bar Exam on July 27 and 28, 2021, and on September 16, 2021, the Maine Board of Bar Examiners (Board) informed her that she had received a passing score. However, the Board declined to issue her a certificate of qualification for admission at that time, as it had not yet been able to verify her character and fitness to practice law. *See* M. Bar Admission R. 9. The Board subsequently conducted an investigation of McGonagle's character and fitness, which culminated in a hearing on April 13, 2023. Following the hearing, on May 12, 2023, the Board issued a written decision denying her application, concluding that she had not met her burden to show that she possessed the good moral character necessary for admission.

On May 17, McGonagle filed a petition for admission to the bar with the Maine Supreme Judicial Court, and the Chief Justice assigned a single justice of the Supreme Judicial Court to hear the matter de novo. *See* M. Bar Admission R. 9 (d)(6)(c).

Factual Background

The following facts were established at an evidentiary hearing on August 31, 2023:

McGonagle grew up in Maine and attended Fordham University in the Bronx from 2005 to 2009. Records from her time at Fordham indicate that she was a good student, with a keen interest in politics and international affairs.

One night, while she was living in the Bronx and attending Fordham, McGonagle was sexually assaulted. The assault was emotionally traumatizing, and she had immense difficulty coping with what had happened. She became depressed and withdrawn and she cut ties with many of her former friends. She also survived a suicide attempt.

Despite these significant personal struggles, McGonagle graduated from Fordham in May 2009, with a degree in International Political Economy. She moved back to Maine and began to work for Maine Health as a patient intake specialist in the Emergency Department at Maine Medical Center. However, she continued to struggle socially and emotionally.

In August 2009, McGonagle was pulled over while driving under the influence of alcohol. She was arrested and charged with criminal OUI (Class D) and driving to endanger (Class E). *See* 29-A M.R.S. § 2411(1-A)(A) (2008) (criminal OUI); 29-A M.R.S. § 2413(1) (2009) (driving to endanger). As a result of these charges, McGonagle entered a deferred disposition agreement in which she agreed, *inter alia*, to plead guilty to the OUI charge and “refrain from all criminal conduct and violation of federal, state, and local laws” for one year. At the end of the one year period, the OUI charge would be dismissed, and she would plead guilty to the driving to endanger charge. Notwithstanding the following, she completed the deferred disposition without incident.

In 2010, McGonagle was asked by her roommate to help a man from Azerbaijan, who will be referred to in this decision as “BA.” BA was living in the United States on a visa that was scheduled to run out and wanted McGonagle to marry him so that he could remain in the country. McGonagle was skeptical of this plan at first, but after speaking with BA, she agreed to go along with it. McGonagle testified that BA was very charming and assured her that there was nothing to worry about; she ultimately agreed to enter the sham marriage to gain the approval of her roommate, who was one of her only remaining friends at the time.

McGonagle and BA were married in a formal ceremony in May 2010. She helped him complete the necessary forms to notify immigration officials of their marriage by filling out the information that pertained to her. She signed several of these forms under penalty of perjury but did not file any of them herself. She also added BA's name to her lease, though they never lived together as husband and wife.

McGonagle did not receive any direct compensation for her role in this sham marriage. However, BA and McGonagle filed joint tax returns twice, and BA allowed McGonagle to keep the refund, which amounted to approximately three thousand dollars per year. There was no evidence presented at the hearing to establish how much of the refund McGonagle would have been entitled to had she filed individually.

In 2012, McGonagle's then-boyfriend proposed to her, which prompted her to ask BA for a divorce. BA wanted the marriage to last longer to benefit his immigration status, but McGonagle nonetheless filed for divorce in April 2013. During the pendency of the divorce, McGonagle signed an affidavit for BA to use in his immigration proceedings attesting that their marriage was "in good faith" and that they had been "very much in love" when they were married. The divorce was finalized in June, and McGonagle married her boyfriend shortly thereafter.

In October 2017, McGonagle, who had been working at Maine Health continuously since she graduated from Fordham in 2009, applied to the University of Maine School of Law. She did not mention the sham marriage on her law school application, though that information would not have been responsive to any of the questions asked. She was accepted and began taking classes in September 2018.

In October 2018, two investigators working for the U.S. Department of Homeland Security (DHS) showed up unexpectedly at McGonagle's house and questioned her regarding her marriage to BA. McGonagle was not completely truthful with the investigators. She confirmed an affidavit that she had signed in conjunction with the sham marriage. She also told the investigators that she had a short-lived, intimate relationship with BA, which was not true. However, McGonagle did admit that she was aware that BA was in removal/deportation proceedings prior to the marriage and that the sole purpose of the marriage was to assist BA by changing his immigration status.

After the interview, McGonagle felt guilty about lying to investigators. She contacted a local attorney, Robert Levine, and told him everything that had happened. She indicated that she wanted to rectify the situation by being truthful with the government. According to Levine, she was remorseful and very forthcoming about her interview with the investigators. Levine contacted

the Office of the U.S. Attorney for the District of Maine and explained that McGonagle had lied to the investigators. Levine also arranged a meeting between then-Assistant U.S. Attorney Darcie N. McElwee,¹ the DHS investigators, and McGonagle, which took place on December 21, 2018.

By all accounts, McGonagle was truthful and forthcoming at this meeting. In a letter submitted as evidence in this proceeding, USA McElwee explained that McGonagle acknowledged her previous lie about being intimate with BA and explained the circumstances that led to the sham marriage. McElwee also explained that McGonagle provided “great detail” about the arrangement that she and BA had, the steps they took to carry out the sham marriage, and the financial benefit she received because of the joint tax filings that she and BA submitted. Following this meeting, McGonagle testified under oath before a grand jury. In her letter, McElwee wrote that it appeared that McGonagle was “truthful with me and investigators shortly after the October 2018 interview and in all subsequent meetings.” Levine testified to these facts as well and noted that it was clear to him that McGonagle understood how important her candor was in these proceedings.

¹ McElwee is now the U.S. Attorney (USA) for the District of Maine.

Around the same time that she reached out to Levine, McGonagle contacted the Dean of Students at the University of Maine School of Law and disclosed the facts surrounding the sham marriage and her recent interview with federal officials. The Dean advised McGonagle to “wait and see” what happens with the investigation and recommended that she contact the Maine Assistance Program for Lawyers and Judges for counseling, which she did.

McGonagle continued her law school studies throughout this period and continued to work part time at Maine Health. In law school, she excelled academically and consistently made the Dean’s List. She was an editor on the Maine Law Review and earned the prestigious Charles Harvey Fellowship in 2020. In May 2021, McGonagle graduated magna cum laude.

In the Spring of 2021, prior to graduation, McGonagle submitted her application to take the Bar Exam in Maine. Question 27(B) of the application asked: “Are there any other facts not disclosed hereto concerning your background, history, experiences or activities which may have a negative bearing on your character, fitness, or eligibility to practice law in Maine?” McGonagle checked the box labeled “Yes” under Question 27(B) and attached an addendum to her application disclosing the sham marriage that had occurred from 2010-2013 and her participation in the subsequent investigation. In the addendum, she indicated that she was approached by

investigators in 2018, that she was “nervous and timid” when she spoke with them, and that she thereafter retained counsel and cooperated “fully and completely” with the investigation. She indicated that she had not been charged with any crime in relation to the situation. Around this same time, McGonagle formally amended her law school application to disclose these facts. As mentioned above, McGonagle took the bar exam in July 2021, and received a passing score.

During the summer of 2020, McGonagle applied for and received a law clerk position in the York County Superior Court. Although she did not disclose the sham marriage or her interactions with federal investigators while interviewing, the application process did not present any questions to which that information would have been responsive. Between August 2021 and August 2022, she worked as a law clerk in Superior Court with Justices Mulhern and Douglas. In the fall of 2021, after she took the bar exam, the issue of her character arose because of her application for admission to the Maine bar. She disclosed to Justices Mulhern and Douglas the history of her involvement with the federal officials regarding the sham marriage. McGonagle continued to work for the Justices following this disclosure.

Legal Standard

Maine Bar Admission Rule 9(d)(6)(C) states that a petition for admission to the bar submitted to a single justice of the Supreme Judicial Court shall be heard de novo. An applicant to the Maine bar must produce “satisfactory evidence of good moral character” before gaining admission. 4 M.R.S. § 805-A(2)(A) (2023). To make this showing, the applicant must demonstrate that she possesses “attributes . . . pertinent to the trust placed in lawyers by the public and clients” and necessary to comply with the Maine Bar Rules and the Maine Rules of Professional Conduct. M. Bar Admission R. 9(a); *see generally* M. Bar R.; M. R. Prof. Conduct.

While not binding in these proceedings, the American Bar Association’s Code of Recommended Standards for Bar Examiners is instructive in further defining the standard of “good moral character.” *See Weinberg v. Bd. of Bar Examiners*, BAR-11-14 at 2-3 (May 7, 2012) (Gorman, J.); *see also* ABA, *Code of Recommended Standards for Bar Examiners* in *Comprehensive Guide to Bar Admission Requirements* vii-x (Judith A. Gundersen & Claire J. Guback eds., 2021) [hereinafter *Recommended Standards*]. The *Recommended Standards* indicate that denial may be appropriate if an applicant’s record manifests a “significant deficiency in the honesty, trustworthiness, diligence, or reliability”

of an applicant. Recommended Standards at viii. The following factors determine the weight and significance of an applicant's prior conduct:

- the applicant's age at the time of the conduct
- the recency of the conduct
- the reliability of the information concerning the conduct
- the seriousness of the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant's positive social contributions since the conduct
- the applicant's candor in the admissions process
- the materiality of any omissions or misrepresentations

Id. at ix.

Findings

With the foregoing rules in mind, and based on the evidence presented at the August 31 hearing, I make the following findings:

I find that in 2010-2013 McGonagle was involved in a sham marriage to assist a person who was facing deportation. She filled out the necessary paperwork, including affidavits under oath, to convince immigration officials that BA was lawfully married to her, a U.S. citizen.

I find that McGonagle engaged in illegal conduct to help a friend who asked her to get involved. I find that she did not marry BA for any financial gain or any altruistic purpose, but primarily to gain the acceptance of a friend. This motivation was driven by her emotional state following a sexual assault upon her while a student at Fordham. I believe her testimony that this assault incident resulted in her becoming introverted and resulted in her losing friends. This request for help by a friend, one of only a few friends that she had, colored her decision. This does not justify her illegal conduct but does help explain why she would do such a reckless thing.

Although BA told McGonagle to keep the total refund from joint tax returns they filed, I find that this was a gift rather than a *quid pro quo* for her participation in the sham marriage. There was no evidence as to what her refund would have been had she filed individually and no evidence that the prospect of keeping these returns motivated her decision to enter the sham marriage.

I find that McGonagle was not truthful to federal officials who interviewed her in 2018. Specifically, she misled the officials into believing that her relationship with BA was real.

I also find that her immediate response to this incident revealed that she wanted to rectify the misconduct by telling the truth to the government officials.

I believe Levine when he testified that McGonagle was very remorseful and that she wanted to rectify her misleading testimony to the investigators during the October meeting. Her subsequent cooperation with the U.S. Attorney's office satisfies me that she truly wanted to make amends for what she had done years before and during her October 2018 interview.

I find that her call to the Dean of Students at the law school also evidences good moral character. Realizing that she had not disclosed the sham marriage on her application to law school, she felt it necessary to inform the school about what happened. The law school application did not present any questions that would have required her to disclose the sham marriage.

I also find that her application for a law clerk position did not require any disclosure of the sham marriage or the incident with the investigating officials in October of 2018. I find that, when the issue surrounding her admission to the bar came up, she decided to disclose what had transpired to the justices with whom she was working. Although this disclosure may have been motivated by a desire to deal with the issues surrounding her admission to the bar, she could have kept silent and hoped that it would not become an issue before the end of her one year appointment. At that point in time, she had not been denied admission to the bar, she had cooperated with the U.S. Attorney, and she had hoped that once again this entire matter was behind her.

I find the testimony of Justices Mulhern and Douglas to be very credible, significant, and persuasive. Both justices—who worked with her closely for a year and knew of her past transgressions—vouched for her good moral character. Justice Douglas went one step further, stating his belief that “she would be a credit to the bar.” These justices did not have to step forward and render opinions regarding McGonagle’s character, they very easily could have declined any comment, one way or the other. Their willingness to vouch for her is highly probative of her current good moral character and fitness to practice law.

I find that her application for admission to the bar, though not a complete or detailed explanation of all that had happened, disclosed her involvement in a sham marriage and her involvement with investigators in 2018. This was certainly enough to put the Board on notice of her prior misconduct. Bar counsel takes issue with her use of the phrase, “she answered to the best of her ability,” instead of indicating that she lied. However, the answer also discloses that she quickly retained counsel and cooperated with the U.S. Attorney’s office. In her answer, she also indicated that she apologized to the U.S. Attorney and the investigators. She acknowledged that her conduct was serious and that she was remorseful. Taken as a whole, her answer disclosed the relevant facts and does not demonstrate a lack of good moral character.

I find McGonagle's decision to divorce BA despite his request that they continue the marriage, her marriage to her boyfriend, her accomplishments during law school and post-graduation, and the confidence she earned from two justices of the Superior Court to be further evidence of her good moral character.

Conclusion

I find and conclude that Allison McGonagle has presented evidence sufficient to demonstrate that she presently possesses good moral character and is fit to practice law in Maine. Accordingly, she shall be issued a Certificate of Qualification.


The entry is:

The petition of Allison McGonagle for certification of her character and fitness to practice law is GRANTED. Remanded to the Maine Board of Bar Examiners for the issuance of a Certificate of Qualification.

Dated: September 25, 2023

RECEIVED
SEP 29 2023
ATTORNEY GENERAL

RECEIVED
SEP 27 2023
Clerk's Office
Maine Supreme Judicial Court



Joseph M. Jabar, Associate Justice
Maine Supreme Judicial Court