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FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

MAR - 9 2017

MICHAEL S. RICHIE
CLERK

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: THE APPLICATION OF JULIA A. PALMER
FOR ADMISSION TO THE OKLAHOMA BAR
ASSOCIATION,

Appellant,

v.

OKLAHOMA BOARD OF BAR EXAMINERS,

Appellee.

Filed (date)	3/9/17
Filed	TS
Filed	TS
Filed	TS
English	yes

SCBD #6373

CORRECTION ORDER

¶1 The order in the above styled and numbered cause filed on March 6, 2017, is hereby corrected as follows:

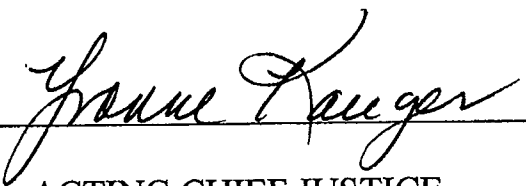
1. On page 3, ¶1, the phrase "Rules Governing Disciplinary Proceedings" is corrected to Rules Governing Admission to the Practice of Law in Oklahoma.

and

2. On page 13, ¶17, the phrase " Rules Governing Disciplinary Proceedings" and corresponding footnote are corrected to "Rule Governing Admission to the Practice of Law in Oklahoma."

In all other respects, the order shall remain unaffected by this correction order.

DONE BY ORDER OF THE SUPREME COURT THIS 9th DAY OF
MARCH, 2017.


ACTING CHIEF JUSTICE

80

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: THE APPLICATION OF)
 JULIA A. PALMER FOR ADMISSION)
 TO THE OKLAHOMA BAR)
 ASSOCIATION)
)
 JULIA A. PALMER)
)
 Appellant,)
)
 v.)
)
 OKLAHOMA BOARD OF BAR)
 EXAMINERS,)
)
 Appellee.)

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SCBD 6373

ORDER

Appellant has taken and passed the Oklahoma Bar Examination. She was admitted to the practice of law in the State of Oklahoma by order of this Court on September 19, 2016, in SCBD 6438. Accordingly, this cause is dismissed as moot.

DONE BY ORDER OF THE SUPREME COURT this 6th day of March, 2017.

Norma E. Gurich

ACTING CHIEF JUSTICE

CONCUR: GURICH, V.C.J., WATT, WINCHESTER, EDMONDSON, COLBERT and REIF, JJ.

DISSENT: COMBS, C.J. and KAUGER, J. (by separate writing)

NOT PRESENT AND NOT PARTICIPATING: WYRICK, J.

Filed (date)	3/6/17
Posted	TS
Mailed	TS
Checked	TS
Published	P

80

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: THE APPLICATION OF JULIA A. PALMER)
 FOR ADMISSION TO THE OKLAHOMA BAR)
 ASSOCIATION,)
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 Appellant,)
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 v.)
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 OKLAHOMA BOARD OF BAR EXAMINERS,)
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STATE OF OKLAHOMA

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SCBD #6373

KAUGER, J., with whom COMBS, C.J., joins, dissenting:

¶1 The only issue presented is whether a lawyer who is admitted to practice law in a reciprocal state's bar association may be admitted to the Oklahoma Bar Association without examination pursuant to Rule 2 of the Oklahoma Rules Governing Admission to the Practice of Law, 5 O.S. Supp. 2015 ch. 1, app. 5¹

¹Rule 2, of the Rules Governing Admission, 5 O.S. Supp. 2015 ch. 1, app. provides in pertinent part:

... Admission Upon Motion Without Examination.

For purposes of this Rule, the term "reciprocal state" shall mean a state which grants Oklahoma judges and lawyers the right of admission on motion, without the requirement of taking an examination and whose requirements for admission are similar to Oklahoma's admission upon motion without examination standards.

The following persons, when found by the Board of Bar Examiners to be qualified under Section I and 2 of Rule One, may be admitted by the Supreme Court to the practice of law in the State of Oklahoma upon the recommendation and motion of the Board, without examination:

Section 1. Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status in a reciprocal state, and have engaged in the

Filed (date)	3/6/17
Noted	TS
Served	TS
Disb	TS
Publish	yes

when a portion of the lawyer's work included serving as a law clerk for a federal judge in another state. The promulgation of this case was delayed because of the insistence of a technical application of our internal rules and as a result, this applicant has already and taken and passed the Oklahoma Bar Examination. However, the cause is not moot because it is capable of repetition.² The applicant meets the qualifications for admission without examination and would have

actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding application for admission under this Rule. The years of practice earned in multiple reciprocal jurisdictions cannot be combined.

For the purposes of this section, "practice of law" shall mean:

- (a) Private practice as a sole practitioner or for a law firm, legal services office, legal clinic or similar entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal jurisdiction in which that practice occurred;
- (b) Practice as an attorney for a corporation, partnership, trust, individual or other entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal jurisdiction in which the practice occurred and involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, executive departments, administrative bureaus, or agencies;
- (c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section I (b) above;
- (d) Employment as a judge, magistrate, referee, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States); provided that such employment is available only to attorneys;
- (e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or
- (f) Any combination of the above.

The period of the "practice of law" as defined above in subparagraphs 1(a) through 1(f) shall have occurred outside the State of Oklahoma in a reciprocal state. Applicants for admission without examination shall furnish such proof of practice and licensing as may be required by the Board. No applicant for admission without examination under this rule will be admitted if the applicant has taken and failed an Oklahoma bar examination without having later passed such examination

²Martin v. Gray and Goodville Mutual Casualty Co., 2016 OK 114, ¶12, 385 P.3d 641 Scott v. Oklahoma Secondary School Activities Ass'n, 2013 OK 84, ¶14, 313 P.3d 891.

qualified for admittance to the Oklahoma Bar Association under our current rules.

However, as a matter of clarification, I would amend Rule 2 of the Rules

Governing Disciplinary Proceedings as follows:

. . .Admission Upon Motion Without Examination.

For purposes of this Rule, the term "reciprocal state" shall mean a state which grants Oklahoma judges and lawyers the right of admission on motion, without the requirement of taking an examination and whose requirements for admission are similar to Oklahoma's admission upon motion without examination standards.

Reciprocal state may include military jurisdictions, the District of Columbia, and territories, districts, commonwealths or possessions of the United States.

The following persons, when found by the Board of Bar Examiners to be qualified under Section I and 2 of Rule One, may be admitted by the Supreme Court to the practice of law in the State of Oklahoma upon the recommendation and motion of the Board, without examination:

Section 1. Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status in a reciprocal state, and have engaged in the actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding application for admission under this Rule. The years of practice earned in multiple reciprocal **states may be combined.**

For the purposes of this section, "practice of law" shall mean:

(a) Private practice as a sole practitioner or for a law firm, legal services office, legal clinic or similar entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal **state** in which that practice occurred;

(b) Practice as an attorney for a corporation, partnership, trust, individual or

other entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal **state** in which the practice occurred and involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, executive departments, administrative bureaus, or agencies;

(c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section I (b) above;

(d) Employment as a judge, magistrate, referee, **law clerk**, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States); provided that such employment is available only to attorneys;

(e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or

(f) Any combination of the above.

The period of the "practice of law" as defined above in subparagraphs 1(a) through 1(f) shall have occurred outside the State of Oklahoma in a reciprocal state. Applicants for admission without examination shall furnish such proof of practice and licensing as may be required by the Board. No applicant for admission without examination under this rule will be admitted if the applicant has taken and failed an Oklahoma bar examination without having later passed such examination

Section 4. It is the purpose of this rule to grant reciprocity to qualified judges and lawyers from other **reciprocal states** and to secure for Oklahoma judges and lawyers like privileges. If the former **state** of the applicant does not grant to Oklahoma judges and lawyers the right of admission on motion, then this Rule shall not apply and the applicant must, before being admitted to practice in Oklahoma, comply with the provisions of Rule Four. If the former **state** of the applicant permits the admission of

and exacting and contain other limitations, restrictions or conditions of admission and the fees required to be paid are higher, the admission of applicant shall be governed by the same Rules and shall pay the same fees which would apply to an applicant from Oklahoma seeking admission to the bar in the applicant's former **state**. If the applicant's actual and continuous practice for the past five of seven years is from a nonreciprocal **state** that does not grant Oklahoma judges and lawyers the right of admission on motion, the professional experience from the former **state** will not be considered, and any professional experience from a nonreciprocal **state** cannot be combined with the professional experience from a reciprocal **state** to meet the requisite five of seven years of actual and continuous practice.

(Changes to Rule are in bold).

FACTS AND PROCEDURAL HISTORY

¶2 The facts are stipulated by the parties. The appellant, Julia A. Palmer, graduated from an American Bar Association approved law school and passed the Georgia Bar Exam. On July 10, 2009, she was sworn in as a member of the Georgia Bar Association and has remained a good standing member of the Georgia Bar since her admission.

¶3 From September 8, 2008 through August 31, 2011, United States District Judge John Preston Bailey, from the Northern District of West Virginia employed Palmer as a “Judicial Elbow Clerk.” Her job was located in Wheeling West Virginia, where Judge Baily was located, and in Martinsburg, Clarksburg, and Eikins, West Virginia where the Judge also presided.

¶4 On October 1, 2011, Palmer began working as an associate attorney in a law firm located in Atlanta, Georgia and she practiced law continually in the state of Georgia until August 31, 2015. On September 1, 2015, Palmer joined the Tulsa, Oklahoma law firm of McAfee & Taft where she has been staffed on a case pending in the Middle District of Georgia. (The case has now apparently been settled).

¶5 Both the states of West Virginia and Georgia have reciprocity with Oklahoma and in both states, an Oklahoma lawyer may be admitted on a motion similar to our Rule 2 of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2015 ch.1, app. 5.³ On July 21, 2015, Palmer submitted her Application for Admission on Motion for consideration by the Board.

¶6 By letter dated December 18, 2015, the Board denied Palmer's application, but offered her the opportunity to seek admission by examination and approving the National Conference of Bar Examiners character and fitness portion of her application.⁴ The letter offered no explanation of the reason for

³Title 5 O.S. Supp. 2015 ch.1, app. 5.

⁴The December 18, 2015, letter provides in pertinent part:

...The Board of Bar Examiners has considered your application of admission on motion to Oklahoma. It was the Board's decision that your application be denied for failure to meet admission requirements.

engaging in the actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding.

¶7 On January 7, 2016, Palmer responded to the Board's letter and requested a hearing. She noted that, although the Board's letter was not crystal clear, the only issue appeared to be the Board's interpretation of Rule 2 of the Rules Governing Admission, 5 O.S. Supp. 2015 ch.1, app. 5, in denying her credit for time spent working as a federal law clerk. She also requested that the matter be timely resolved in the event that she had to make arrangements to take the July Bar Exam.

¶8 Two months later, on March 11, 2016, the Board reconsidered the matter. On March 15, 2016, the Board issued its finding of facts and conclusions of law. It noted that the facts were not in dispute and were stipulated in lieu of an evidentiary hearing. It determined that the legal issue to be decided was whether an applicant may be given credit for the time period when the applicant worked as

Section 1 of Rule Two of the Rules Governing Admission to the Practice of Law in the State of Oklahoma (RGAT), 5 O.S. 20-13, ch. 1, app. 5, states that an applicant must have engaged in the actual and continuous practice of law in a reciprocal state for at least five of seven years immediately preceding their application to qualify for admission. Based on the information you provided, it appears that you do not meet that qualification.

Please refer to Rule 11 of the Rules for your right to appeal this decision. The Board has determined that any fees you have already paid will be applied to a bar examination application should you wish to seek admission in Oklahoma by taking a bar examination. The NCBE character and fitness portion will not need to be redone.

...

a law clerk in one state while admitted to a bar in another state, but did not practice law in the admitting state for five of the seven years immediately preceding the application.

¶9 The Board agreed that Palmer's work as a law clerk for the judge was considered to be the actual and continuous practice of law, however, because the practice was in a jurisdiction other than Georgia, it did not count. It also noted that:

Rule Two, Section 1, states: 'The years of practice earned in multiple reciprocal jurisdictions cannot be combined.' Accordingly, Ms. Palmer's time as a clerk cannot be combined with her actual practice in Georgia. Ms. Palmer was only engaged in the actual and continuous practice of law while physically located within the State of Georgia from October 1, 2011 to July 21, 2015, the date of the filing of her Rule Two application with the Board.

Palmer filed a notice of appeal in this Court on March 22, 2016, and requested that the matter be expedited before the July 2016 Bar Exam, in the event she is required to take the exam. The promulgation of this opinion was delayed because of the insistence of a technical application of our internal rules. This applicant has taken and passed the Oklahoma Bar Examination. However, the cause is not moot because it is capable of repetition.⁵

UNDER THE FACTS OF THIS CAUSE,

⁵Martin v. Gray and Goodville Mutual Casualty Co., 2016 OK 114, ¶12, 385 P.3d 641; Scott v. Oklahoma Secondary School Activities Ass'n, 2013 OK 84, ¶14, 313 P.3d 891.

THE APPELLANT IS ENTITLED TO RECIPROCITY.

¶10 Palmer argues that the Board's interpretation of the reciprocity Rule is:

1) as a practicality, unworkable and unrealistic; and 2) contrary to the purpose of the Rule which is to provide equal benefit to lawyers from other states whose bar admission rules provide the same benefits to Oklahoma lawyers. The Board contends that Palmer's interpretation of the Rule is not supported by the language of the Rule or this Court's prior decisions. Both parties agree that Palmer's job as a Federal Law Clerk constitutes the practice of law and that is not an issue in this cause.⁶

¶11 The responsibility for the due administration of justice and regulation and control of the Bar is vested in the Supreme Court,⁷ including the right to

⁶In *R.J. Edwards, Inc. v. Hert*, 1972 OK 151, ¶20, 504 P.2d 407 the Court noted that:

Our decisions definitely spell out the concept of the practice of law: the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent. This is a concept applied over and over again in other jurisdictions. . . . In view of our own prior statements, and of this long line of like statements elsewhere, it was unnecessary that we should otherwise have defined "practice of law" to include specific acts as a prerequisite to the exercise of the proper jurisdiction of the judicial department. . . . (citations omitted)

⁷The Oklahoma Constitution, art. 7, §1 provides:

The judicial power of this State shall be vested in Senate, sitting as a Court of Impeachment, a Supreme Court, the Court of Criminal Appeals, the Court on the Judiciary, the State Industrial Court, the Court of Bank Review, the Court of Tax Review, and such intermediate appellate courts as may be provided by statute, District Courts, and such Boards, Agencies and Commissions created by the Constitution or established by statute as exercise adjudicative authority or render decisions in individual proceedings. Provided that the Court of Criminal Appeals, the State Industrial Court, the Court of Bank Review and the Court of Tax Review and such Boards, Agencies and Commissions as have been established by statute shall continue in effect, subject to the power of the Legislature to change or abolish said Courts, Boards, Agencies, or Commissions. Municipal Courts in cities or incorporated towns shall continue in effect and shall be subject to creation, abolition or alteration by the Legislature by general laws, but shall be limited in jurisdiction to criminal and traffic

define and regulate its practice.⁸ In exercising our inherent power to organize, regulate and control the Oklahoma Bar Association, we established the Rules Governing Admission to the Practice of Law in Oklahoma, 5 O.S. Supp. 2011 ch.1, app. 5. This Court has exclusive jurisdiction over the licensing of attorneys.⁹

¶12 Rule 2 of the Rules Governing Admission to the Practice of Law in Oklahoma concerns admission to the Bar on motion, without examination. The current version of Rule 2, Section 1, provides in pertinent part that:

Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status in a reciprocal state, and have engaged in the actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding application for admission under this Rule. The years of practice earned in multiple reciprocal jurisdictions cannot be combined.

The Rule does not allow a combination or stacking from reciprocal jurisdictions to meet the five of the seven year requirement, but says nothing about being required to physically practice law within the borders of a reciprocal jurisdiction --- even

proceedings arising out of infractions of the provisions of ordinances of cities and towns or of duly adopted regulations authorized by such ordinances.

Archer v. Ogden, 1979 OK 130, ¶¶7-8, 600 P.2d 1223; Ford v. Board of Tax-Roll Corrections, 1967 OK 90, ¶26, 431 P.2d 423; In re Integration of State Bar of Oklahoma, 1939 OK 378, ¶6, 95 P.2d 113.

⁸Archer v. Ogden, 1979 OK ___, 600 P.2d 1223

⁹In re Application of Bodnar, 2016 OK 12, ¶14, 367 P.3d 916; In re Reinstatement of Kamins, 1988 OK 32, ¶18, 752 P.2d 1125.

continuously relied on that license to practice law for the federal courts when physically in another state, such as the attorney is in this cause.

¶13 The language concerning combining multiple reciprocal jurisdictions was added in our amendment to Rule 2 in 2014,¹⁰ prior to that, such language did not exist.¹¹ Nevertheless, our interpretation has remained unaltered. This subtle clarification was never intended to lead to an absurd result and add a requirement that a lawyer be physically located within the boundaries of one reciprocal jurisdiction at all times, especially in this day and age when the practice of law is often regional, national and even international.

¶14 In Archer v. Ogden, 1979 OK 130, 600 P.2d 1223, the Court recognized that physical boundaries do not define an attorney's right to practice law. In Archer, two active members of the Oklahoma Bar Association who no longer resided within the State of Oklahoma petitioned the Court, asking it to issue a Writ of Mandamus, requiring an Oklahoma trial judge to permit them to practice law within the State of Oklahoma without having to associate with a resident member of the Bar or maintain a continually operating law office within this State. The

¹⁰Rule 2, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2014 ch.1 app. 5.

¹¹Rule 2, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2013 ch.1 app. 5.

Court said that:

It was the intent of this Court in promulgating the . . . Rules that active members of the Oklahoma Bar Association, once admitted to the Association, shall be permitted to practice law within all courts of this State, whether or not they continue to reside in this State.

We see no reason to treat reciprocal applicants any different than Oklahoma lawyers.

¶15 Although, physical location of an attorney's law practice may have played a role in some instances, it has never been determinative. For example, on June 17, 2013, in SCBD #5985, we admitted Justin Ray Jackson to the Oklahoma Bar Association. Jackson, was admitted to practice law in the then non-reciprocal state of New Mexico, two years later he was admitted to the United States Patent Bar in May of 2007. Much of his work occurred within the District of Columbia which was a reciprocal state where Jackson also sought admission to the Washington, D.C., Bar Association.

¶16 The Court determined that because much of his practice occurred in the district of Washington, D.C., and in the federal arena, coupled with the fact that he received advice from an employee of the Oklahoma Board of Bar Examiners on how to secure admittance and made life altering decisions based on the advice he received, he should be admitted to Oklahoma. This decision illustrates that the

practice of law is not necessarily confined to one state but often regional, national and even international, and that when it comes to reciprocity, rules cannot be rigidly applied unrealistically.

¶17 Because Palmer worked for the federal court, she practiced the same law, no matter what state she was assigned. Accordingly, Palmer, who was licensed in the reciprocal state of Georgia, but who practiced law as a Federal Law Clerk in the reciprocal state of West Virginia has met the requirements for Rule 2 of the Rules Governing Admission to the Practice of Law in Oklahoma¹² and was qualified for admittance. I would also amend Rule 2 of the Rules Governing Disciplinary proceedings.

¹²Rule 2, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2015 ch.1 app. 5.